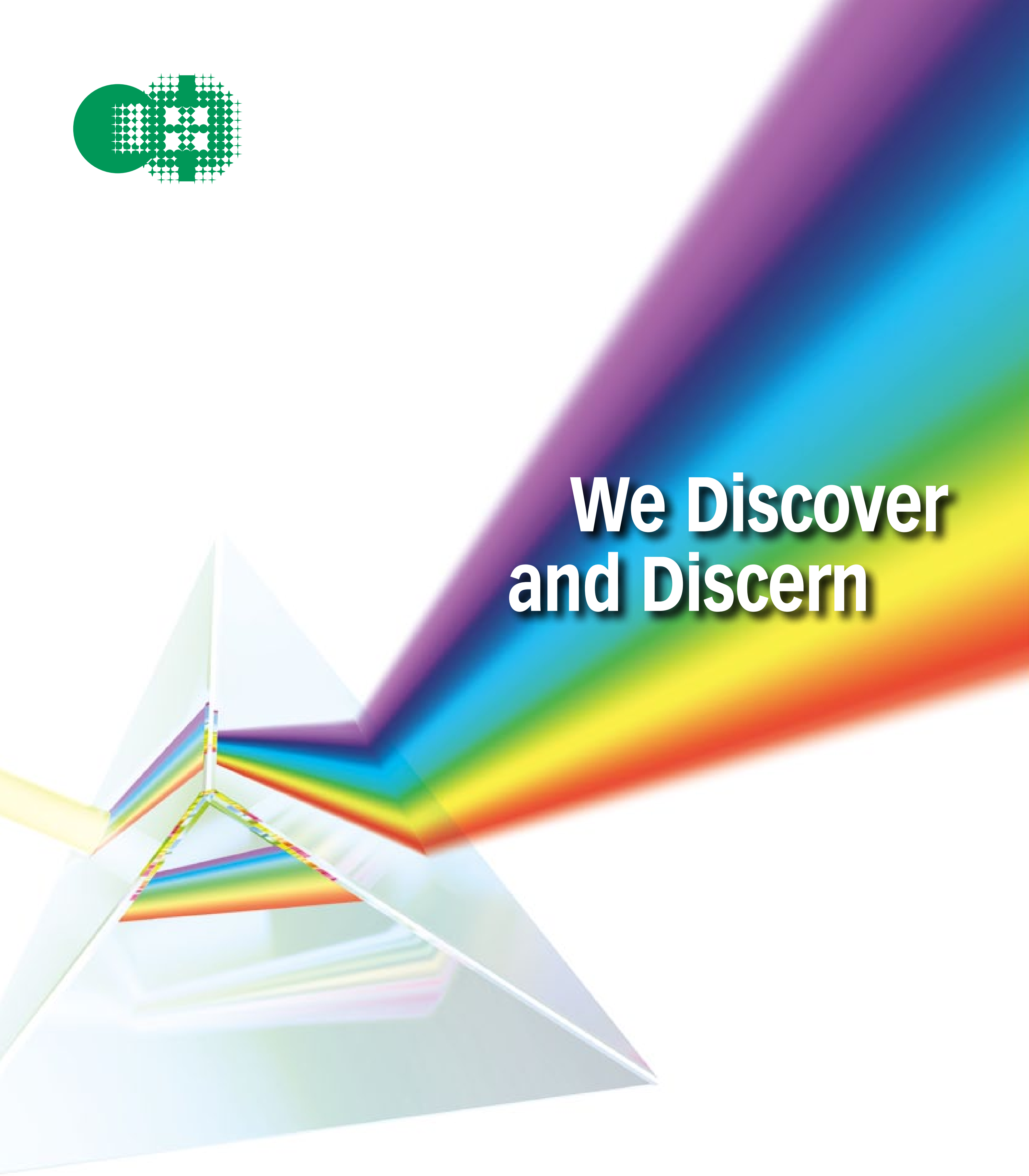
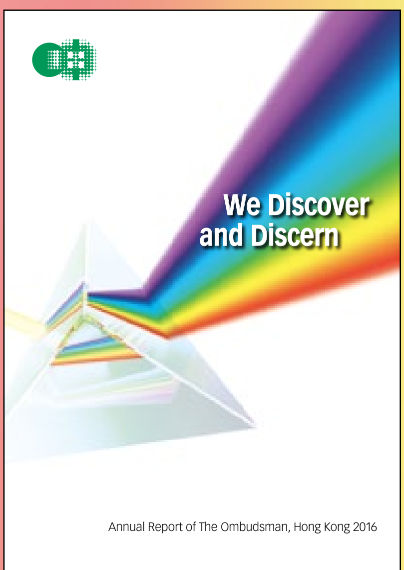


We Discover and Discern

Annual Report of The Ombudsman, Hong Kong 2016



The Ombudsman, Hong Kong
Annual Report 2016

The prism is a transparent optical element that can separate a beam of white light into its constituent spectrum of colours. This year's design concept uses the prism to illustrate this Office's functions in conducting rigorous investigation and analysis. We seek truth from facts and, through objective judgement, make recommendations to promote fair and efficient public administration in Hong Kong.

Vision

To ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service

Mission

Through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in public administration

Functions

The Ombudsman should serve as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuse of power is prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency

Values

- Maintaining impartiality and objectivity in our investigations
- Making ourselves accessible and accountable to the public and organisations under our jurisdiction
- According the public and organisations courtesy and respect
- Upholding professionalism in the performance of our functions

Performance Measures

- Speed of case work
- Complainants' level of satisfaction with case handling
- Redress obtained
- Recommended improvement measures committed to and/or implemented
- Non-repetition of complaints

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Glossary of Terms

Complainants Charter

History in Brief

1988

20 July

The Commissioner for Administrative Complaints ("COMAC") Bill was passed by the Legislative Council ("LegCo")

1989



First Commissioner Mr Arthur Garcia, JP

1 February

The COMAC Ordinance was enacted

First Commissioner Mr Arthur Garcia, JP assumed office

1 March

The Office of COMAC became operational with staff seconded from Government

15 November

COMAC became a member of the International Ombudsman Institute ("IOI")

1993

21 July

Legislative review completed, the COMAC (Amendment) Bill was introduced into LegCo

1994



Second Commissioner Mr Andrew So, SBS, OBE, JP

1 February

Second Commissioner Mr Andrew So, SBS, OBE, JP assumed office

24 June

The COMAC Ordinance was amended:

- to enable the public to lodge complaints directly, instead of by referral from LegCo Members
- to extend the jurisdiction to some major statutory bodies
- to empower the Commissioner to publish anonymised investigation reports
- to empower the Commissioner to initiate direct investigation

30 June

Advisers were appointed to provide expert advice and professional opinion

1 July

Chinese title of the Commissioner was changed to「申訴專員」and the Office to「申訴專員公署」

1995

1 March

Jurisdiction was extended to investigation into alleged breach of Code on Access to Information

23-25, 27 October

The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium

1996

1 March

Non-official Justices of the Peace ("JPs") were enlisted in a JPs Assistance Scheme

15-16 April

The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association ("AOA") and became a founding member

24 October

The Ombudsman was elected to the Board of Directors of the IOI

27 December

English titles were changed to "The Ombudsman" and "Office of The Ombudsman"

1997

1 April

Mediation service was launched as an alternative dispute resolution method

25 July

The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively

1998

8 May

The Ombudsman was elected Secretary of the AOA

1999



Third Ombudsman Ms Alice Tai, GBS, OBE, JP

1 April

Third Ombudsman Ms Alice Tai, GBS, OBE, JP assumed office

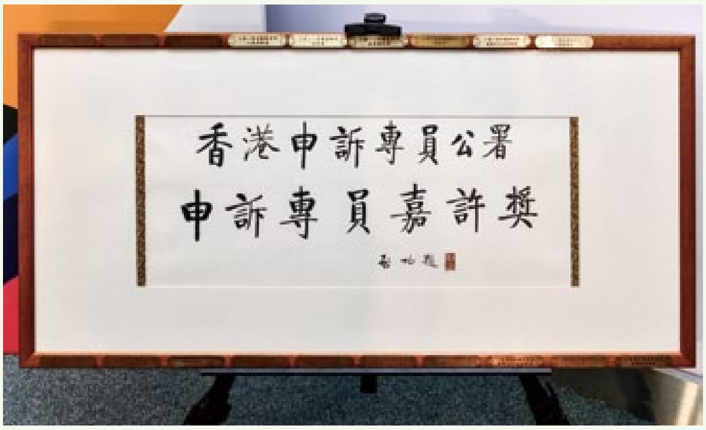
22 July

The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services

2000

27 July

The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally



The Ombudsman's Awards

2 November

The Ombudsman was elected to the Board of Directors of the IOI

2001

28 March

Telephone complaint service was introduced

19 December

The Ombudsman (Amendment) Ordinance 2001 came into operation:

- to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters
- to empower The Ombudsman to set terms and conditions of appointment for staff
- to adopt systems and processes separate from Government

2002

6 September

Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan

16 October

The Ombudsman was elected Secretary of the IOI

2004

1 April

Ms Alice Tai, GBS, OBE, JP started her second term (2004 – 2009) as The Ombudsman

10 September

The Ombudsman was re-elected Secretary of the IOI

13 December

With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance

2005

24 October

A "Memorandum of Administrative Arrangements" ("MAA") was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office and working relationship with Government



Signing of MAA

28 November – 1 December

The Ombudsman hosted the 9th AOA Conference

2008

5-8 November

The Ombudsman hosted the Board of Directors Meeting of the IOI

2009



Fourth Ombudsman Mr Alan Lai Nin, GBS, JP

1 April

Fourth Ombudsman Mr Alan Lai Nin, GBS, JP assumed office

11 June

The Ombudsman was re-elected to the Board of Directors of the IOI

12 June

Ms Alice Tai, GBS, OBE, JP was awarded IOI Honorary Life Membership

2 November

Ms Alice Tai, GBS, OBE, JP was awarded AOA Honorary Life Membership

2010

19 October

The Ombudsman was elected Treasurer of the IOI

2011

8 December

The Ombudsman was re-elected Secretary of the AOA

2012

5-10 May

The Ombudsman hosted the Mid-term Board of Directors Meeting of the IOI

22-24 May

The Ombudsman coorganised the IOI Regional Training of Asia and Australasia & Pacific Regions with the Commission Against Corruption of Macao



IOI Regional Training

2014



Fifth Ombudsman Ms Connie Lau, JP

1 April

Fifth Ombudsman Ms Connie Lau, JP assumed office

2015

20 January

Mr Alan Lai, GBS, JP was awarded IOI Honorary Life Membership

20 August

The Ombudsman was elected Director of the IOI (Australasia & Pacific Region)



The Ombudsman and IOI President

22 September

Mr Alan Lai, GBS, JP was appointed to the Pool of Experts of the IOI

25 November

Mr Alan Lai, GBS, JP was awarded AOA Honorary Life Membership

The Ombudsman was re-elected Secretary of the AOA



AOA Board of Directors Meeting

The Ombudsman's Review



The Reporting Year 2015/16 has been a rewarding one. Thanks to the cooperation of the organisations concerned as well as the hard work and dedication of my staff, our Office has again completed 5,000 plus complaint cases.

Our efforts to promote the use of mediation to efficiently resolve cases involving no or only minor maladministration have continued to bear fruits. The number of cases resolved is on a par with that of the previous Reporting Year, with the satisfaction levels of both complainants and complainee organisations reaching almost 100%.

There has also been an increase in the number of direct investigations ("DIs") completed. This is partly attributable to a change that we have made in the way we treat the preliminary inquiries that we often conduct to assess the need for launching a DI. As some of these inquiries are quite substantial and may entail concrete suggestions to the organisations concerned for their improvement, I have decided that inquiries of such nature should be developed into DIs, which would then allow our Office to exercise our statutory power to publish the reports, on completion of the DIs. This would enhance the transparency and public understanding of our work. Naturally, some of these reports may appear less weighty than the others. I hope, nevertheless, that the public will find them interesting and useful.

As can be noticed in this report, many of our completed DIs were on problems which had existed for years or even decades. In responding to our probing, the organisations concerned would typically defend their position by pointing to the existing legislation, policy and/or procedures as justifications for their action or inaction, while the public continue to suffer as the problems persist and proliferate.

My observation is that problems continue unchecked because of many reasons. The relevant legislation/policy/procedures may be outdated; the organisations concerned may not have been taking actions in a rigorous and timely manner; or they may not have bothered to set targets and sought meaningful results. It seems that they have merely been content with "being seen to have been doing something". The attitude of such organisations is disappointing, and never works in appeasing aggrieved persons.

Another major reason for failure is their compartmentalisation mentality. This means that where solving a problem requires the input of more than one department, it is often left unattended and becomes nobody's problem as every department would say they do not have sufficient power to tackle it. And where more than one department can actually solve the problem without help from others, the responsibility for resolving the problem is seen as belonging to others who are in a better position to tackle it.

In these circumstances, public complaints would grow and problems become even more unwieldy. By the time the relevant organisations eventually decide to introduce major changes, or manage to work together, the slow pace of action means that huge costs would have been incurred, i.e. in terms of detriment to the organisations' image; and years of wasted resources from futile actions.

As a result, it cannot be denied that many problems we have identified call for timely changes by the organisations concerned. With our statutory power of recommending improvements, our Office is well poised as a catalyst for such changes.

Our complaint investigations have also shown some disappointing inclinations on the part of complainants. While the majority of complainants pursue their complaints in a reasonable manner, some would labour on a moot point or raise irrelevant issues on a concluded case despite repeated explanation by our Office. A few had lodged numerous complaints against certain organisations on a regular basis, picking on trivial defects or service gaps in their daily operations. The workload caused by such unreasonable behaviours not only poses a disproportionate burden on my Office but also deprives other complainants of a fair chance of getting the service they deserve in a timely manner. Understanding that this is a challenge faced by all organisations handling complaints, we shall respond to it with professionalism.

We have also noted that more and more people approach our Office to voice their demand for more/better facilities or services from Government department/public bodies. While it is of course legitimate for the public to state what they want, the non-provision of certain facilities/services requested does not necessarily mean maladministration on the part of the Government department/public body concerned. A potential problem of maladministration would only exist if the Government department/public body is aware of the inadequacy of the facilities/services currently provided and does have the resources, despite competing claims, to enhance them. Therefore, the public should be aware that we may not be able, within our jurisdiction to pursue all complaints of failure to provide facilities or services to the level that some would like.

In this connection, I am planning to make more use of the electronic media so that the public can better understand our role and jurisdiction.

Connie Lau
The Ombudsman
31 March 2016



Directorate

Ms Connie Lau, The Ombudsman (Second left)
Mr K S So, Deputy Ombudsman (Second right)
Mr Tony Ma, Assistant Ombudsman (Right)
Mr Frederick Tong, Assistant Ombudsman (Left)



Annual Report of The Ombudsman, Hong Kong 2016

Chapters





Chapter 1 Our Role, Powers and Obligations

1.1 Established under The Ombudsman Ordinance ("the Ordinance"), Cap 397 of the Laws of Hong Kong, our Office functions as the city's independent watchdog of public administration. We investigate actions by Government departments and public bodies for administrative deficiencies and recommend remedial measures. We promote good public administration for responsive and responsible, fair and open governance.



Jurisdiction

1.2 The Ombudsman has powers to investigate complaints from aggrieved persons about maladministration by the Government departments and public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 1**). We are always on the lookout, and maintain close contact with the Administration, for possible additions to the Schedule.

1.3 Besides investigating complaints received, The Ombudsman may, of her own volition, initiate direct investigation into areas of suspected maladministration usually involving systemic problems or issues of significant public interest.

1.4 Section 2 of the Ordinance defines "mal-administration" as inefficient, bad or improper administration, including: unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for others.

1.5 While some organisations such as the Hong Kong Police Force and the Independent Commission Against Corruption are not included in Part I of Schedule 1 to the Ordinance, they are nevertheless subject to our investigation with regard to cases of non-compliance with the Code on Access to Information[1]. These organisations are listed in Part II of Schedule 1 to the Ordinance (see **Annex 1**).

Matters Not for Investigation

1.6 The Ombudsman is prohibited by law from investigating certain kinds of matters. For example, cases related to legal proceedings or prosecution decisions, contractual and other commercial transactions, personnel matters and imposition or variation of conditions of land grant are out of bounds. A full list of such prohibitions is at **Annex 2**.

1.7 The Ordinance does not preclude us from investigating **policy** matters, but if a policy has been made after a due process with wide public consultation, publicity and mandate, The Ombudsman will normally not treat the policy *per se* as a matter for investigation unless she thinks that there is grave injustice caused. Nevertheless, the way policies are formulated or implemented certainly falls within our ambit, and so does inaction or procrastination on the part of the organisation concerned in conducting a review of such policies when they are found outdated or inequitable.



[1] The Code was introduced in 1995 to make available to the public as much Government-held information as possible, unless there are valid reasons – related to public, private or commercial interests – to withhold it. It applies to all Government departments, the Hong Kong Monetary Authority and the Independent Commission Against Corruption.

1.8 Similarly, our Office would normally not investigate an organisation's action or decision based purely on **professional judgement**. However, in reality, such cases are few and far between, as most actions/decisions involve, to some extent, managerial/administrative aspects, which come within The Ombudsman jurisdiction. Where necessary, we may consult members of our Panel of Advisers, which comprises experts with good standing in various fields (see **Annex 12**).

Restrictions

1.9 The Ordinance also prescribes other circumstances under which The Ombudsman shall not conduct an investigation. For example, the complainant has had knowledge of the subject of complaint for over two years, is anonymous, unidentifiable or not traceable, or is not the person aggrieved or a suitable representative of that person. Such restrictions are also detailed at **Annex 2**.

1.10 Nevertheless, in some cases, The Ombudsman has discretion whether or not to conduct, or discontinue, an investigation. A case may be taken up, for instance, if the complainant is able to explain satisfactorily why the complaint could not have been lodged within two years.

Powers of Investigation and Recommendation

1.11 Under the Ordinance, The Ombudsman has a wide range of investigative powers: conducting inquiries, obtaining information and documents, summoning witnesses and inspecting premises of organisations under complaint.

1.12 While The Ombudsman's investigation shall not affect any action taken by the organisation under complaint or the organisation's power to take further action with respect to any decision which is subject to the investigation, The Ombudsman may report her findings and make recommendations to the organisation for redress or improvement.

1.13 Where an organisation does not adequately act upon her recommendation, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Where a serious irregularity or injustice is found, The Ombudsman may make a further report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.



Secrecy Requirement and Transparency

1.14 The Ombudsman, staff and Advisers are all bound by the Ordinance, under penalty of a fine and imprisonment, to maintain secrecy on all matters that arise from any investigation or complaint and come to our knowledge in the exercise and execution of our functions.

1.15 Nevertheless, the Ordinance allows The Ombudsman to publish a report on any of her investigations in such manner as she thinks fit, if she is of the opinion that it is in the public interest to do so.

1.16 Subject to the statutory requirement mentioned in para. 1.14, we consider it our obligation to adopt a policy of openness and transparency. As regards requests for access to information of our Office, we handle them along the lines of the Government's Code on Access to Information[1].

Our Procedures

Complaint Handling

Modes of Complaint

2.1 Complaints may be lodged in person, by email, by fax, or by mail, postage-free if our complaint form is used. Complaints may also be made by telephone for simple cases involving not more than two organisations.



2.2 We can communicate with complainants by email if they so prefer, and they will be reminded of the security risk involved in email communication. In any case, we require complainants to provide us with their postal address for traceability (see **para. 1.9**), because an email address does not provide sufficient information on the whereabouts of the sender.

Complainants' Representation

2.3 For a complaint made by an individual, he/she should normally be the person aggrieved unless that person is unable to act for himself/herself (see **para. 1.9**). For a complaint made on behalf of a body corporate, the complainant has to satisfy The Ombudsman that the body corporate has authorised him/her as its representative. The Ombudsman will allow legal representation if she considers it justified.

Topical Complaints

2.4 From time to time, we receive complaints from more than one person, more or less concurrently, in respect of a particular current issue or hot topic. We term such cases "topical complaints" to distinguish them from complaint cases on disparate issues or topics, so as to reflect more accurately our caseload and the frequency of complaint against different organisations.

Assessment

2.5 Our Assessment Team usually screens all incoming complaints within a day or two to examine whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. The focus of assessment is on the substance and merits of the complaint, not the number of complainants involved or their degree of persistence. If necessary, the team will seek further information or clarification from the complainant.

2.6 We operate a Duty Officer Scheme under which our investigation officers meet new complainants face-to-face to obtain essential information on their cases for assessment and to brief them on our procedures and restrictions.



2.7 Cases "screened in" go to one of our six investigation teams for inquiry, resolution by mediation or full investigation. For cases "screened out", a recommendation will be made to The Ombudsman for not pursuing the case.

2.8 Where The Ombudsman decides not to pursue a case, we aim to notify the complainant of the reason(s) within 15 working days (see **Annex 3.11** for our performance pledges). Even with cases "screened out" because the complainants are anonymous, unidentifiable, not traceable or not personally aggrieved, we do not dismiss them lightly but may examine if any serious or systemic maladministration or significant issue was involved. This may prompt topics for preliminary inquiry or even direct investigation (see **paras. 2.22 – 2.25**).



2.9 In some cases not pursued, as the complainants may be in need of services from some Government departments or public bodies, we take it upon ourselves to advise them where and how to get such services.

2.10 On appeal by complainants of cases "screened out", the Assessment Team will "re-assess" such cases and present its recommendation to The Ombudsman for decision as to whether the case should be re-opened for follow-up.

Inquiry

2.11 The Ordinance provides that for the purposes of determining whether to undertake a full investigation (see **paras. 2.17 – 2.20**), The Ombudsman may conduct such "preliminary inquiries" as she considers appropriate. In the interest of complainants, we often use this procedure to resolve complaint cases of a general nature more speedily, without unnecessarily resorting to the more time-consuming action of full investigation. For simplicity, we call this "inquiry".

2.12 Sometimes, substantial relevant information comes with the complaint and/or is available in our previous case files or in publications of the organisation under complaint. It may suffice for us to study and analyse such information and then give the complainant a concluding reply.

2.13 In other cases, we ask the organisation under complaint to respond to us and, if we see fit, to the complainant in parallel. We will examine such response, the complainant's views on it, if applicable, together with any other relevant information or evidence that we may have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for redress or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.



Mediation

2.14 Alternatively, with the consent of both the complainant and the organisation complained against, The Ombudsman may try to settle a case by mediation. This dispute resolution method is suitable for cases involving only minor or no maladministration. The two parties meet voluntarily to explore a mutually acceptable solution. Our investigation officers trained in mediation act as impartial mediators.

2.15 For efficiency and convenience to the parties concerned, we also often conduct mediation by telephone and subsequently confirm in writing the agreement reached by the parties.

2.16 If mediation fails to resolve the matter, or the complainant asks for reactivation of his complaint, our Office will assign another investigation officer to start an inquiry or a full investigation afresh. This is to ensure objective processing not influenced by prior knowledge from the mediation process.

Full Investigation

2.17 For complex cases which appear to involve issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, or simply require deeper and fuller probing, our Office will conduct a full investigation.

2.18 This is an extensive and intensive process of probing to establish the facts. Besides examining documents, we may summon witnesses, counter-check data with the complainant and conduct site inspections. Where necessary, we will consult our Advisers.

2.19 We will also invite comments on our preliminary observations from any organisation or individual that may be criticised or adversely affected by the investigation report. When finalised, the report will be presented to the complainant for information and to the head of the organisation concerned for implementation of our recommendations if any.

2.20 In our investigation reports, we usually conclude complaint cases as "substantiated", "partially substantiated" or "unsubstantiated". In some other cases, although the specific allegations in the complaint are unsubstantiated, other significant acts or aspects of maladministration are identified. Such cases are concluded as "unsubstantiated but other inadequacies found"[1].

Review

2.21 Complainants dissatisfied with our findings or conclusions may seek a review of their cases by providing supporting arguments and/or information. Such requests are first assessed by the Assistant Ombudsman concerned, who will consider the complainant's grounds for review and whether the request should be entertained; if so, he will assign a suitable investigation officer to re-examine the case in detail and seek further information or comments from the organisation under complaint as necessary. A submission will eventually be made to The Ombudsman, via the Deputy Ombudsman, to determine whether our original conclusion should be upheld or varied.



Direct Investigation

2.22 The Ombudsman's power to conduct direct investigations ("DIs") in the absence of complaints enables her to look at matters at a macro level as opposed to individual cases, and to pursue issues raised by people not personally aggrieved (see **para. 2.8**). Essentially, the former means examining systems with systemic or widespread deficiencies. A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints of particular matters.

[1] Formerly termed "substantiated other than alleged".

Preliminary Inquiry

2.23 Before deciding whether or not to launch a DI against an organisation, we may conduct a preliminary inquiry[2], a means that we frequently use to handle complaint cases (see **para. 2.11**). In the process, we, on a confidential basis as in investigations (see **para. 1.14**), seek information/explanation from the organisation concerned. If the inquiry points to the need for further study, we will formally notify the head of the organisation concerned and initiate a DI.

Investigation Methodology

2.24 The procedures for DI are largely akin to those for investigation into individual complaints. However, unlike the latter, we may, depending on the nature of the subject under study, invite views on the subject from relevant sectors and experts as well as the community at large. If so, we will inform the public of the initiation of our investigation.

2.25 In the course of our investigation, we often discuss our preliminary findings with senior officers of the organisation under investigation. Such exchanges are useful in clarifying points of doubt and furthering insight into the issues.



Implementation of Recommendations

2.26 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation concerned aim to make for more open and client-oriented service, transparent and accountable administration, more efficient processes and effective practices.



2.27 Heads of organisations have an obligation to report at regular intervals their progress of implementation of our recommendations. We certainly also consider it our duty to monitor the same.

Publication of Reports

2.28 If The Ombudsman considers it to be in the public interest to do so, she may announce at media conferences or place on our website DI reports and anonymised reports on complaint investigation, or where appropriate, summaries of the reports (see **para. 1.15**). Our Office may also answer related enquiries from the media, withholding names and other personal data.

[2] We used to call such work "DI assessment".

Enquiries and Complaints Processing

3.1 During the year under report we received 5,244 complaints, including 213 secondary cases[1] in *topical complaints*. The corresponding figures last year were 5,339 and 428 respectively while the number of enquiries received this year was 12,159.

Table 3a

Enquiries and Complaints Received

Year	Enquiries	Complaints	
		Total	Excluding secondary cases
2011/12	12,545	5,029	4,849
2012/13	12,255	5,501	5,263
2013/14	12,767	5,624	5,226
2014/15	12,940	5,339	4,911
2015/16	12,159	5,244	5,031



3.2 With 868 complaint cases brought forward from last year and 5,244 cases received this year, we had a total of 6,112 complaints for processing this year.

3.3 A breakdown on the number of enquiries and complaints received and processed in the past five years is given in **Annex 3.1**.

Topical Complaints

3.4 The topical complaints received this year gave rise to 213 secondary cases. The largest group of topical complaints concerned some alteration works in a private building which allegedly contravened the Buildings Ordinance and Fire Services Regulations. It generated a total of 92 secondary cases involving two Government departments. The next largest group (with 46 secondary cases) related to the Territory-wide System Assessment ("TSA"), a topic of wide public concern in the year. Two further significant groups of complaints (with 25 and 15 secondary cases separately) concerned alleged lack of reply by the Post Office about tracking of lost mail and improper handling by the Securities and Futures Commission of an incident of stock suspension.



Mode of Lodging Complaints

3.5 While lodging of complaints by email (which includes the e-complaint form through our official website) continued to be the major mode, comprising 47.8% (2,507 cases) of all the complaints received, complaint by letter through post remained popular, with 1,069 (20.4%) complaints using this mode.

[1] For counting purposes, each group of topical complaints is recognised by a "leader case" and the rest are taken as "secondary cases".

Table 3b

Mode of Lodging Complaints

Mode	2011/12	2012/13	2013/14	2014/15	2015/16
In person	573	769	633	527	545
In writing –					
by complaint form	518	621	332	361	294
by letter through post	947	752	1,066	918	1,069
by fax	657	540	467	485	403
by email	1,783	2,144	2,455	2,617	2,507
By telephone	551	675	671	431	426
Total	**5,029**	**5,501**	**5,624**	**5,339**	**5,244**

Complaints Handled

3.6 We completed processing 5,242 (85.8%) of all cases received during the year and those brought forward from last year. Of those completed we pursued 3,100 (59.1%) by way of inquiry, full investigation or mediation. The rest (2,142, 40.9%) were closed after assessment for jurisdictional or legal restriction reasons.

3.7 Of those pursued and completed, 88.4% were concluded by inquiry, 7.3% by full investigation and 4.3% by mediation (see **Table 3c**). The significant increase last year in the number of complaints handled by mediation was largely maintained this year. Among those assessed and closed, over half were due to the fact that there was insufficient ground to pursue the complaint (see **Table 3d**).

Table 3c

Complaints Pursued and Concluded in 2015/16

	No. of Cases	Percentage
By inquiry	2,740	88.4%
By full investigation	226	7.3%
By mediation	134	4.3%
Total	**3,100**	**100.0%**

Table 3d

Complaints Assessed and Closed in 2015/16

	No. of Cases	Percentage
Insufficient ground to pursue	1,187	55.4%
Legally bound	955	44.6%
Total	**2,142**	**100.0%**

Major Causes for Complaint

3.8 Based on the allegations made by the complainants, the top five causes for complaint were:

- error, wrong decision or advice (32.1%);
- ineffective control (15.3%);
- delay/inaction (15.1%);
- lack of response to complainants/enquirers (8.3%); and
- poor staff attitude (4.5%).

The first four were the same as last year in terms of order but "staff attitudes" took over "faulty procedures" as the fifth major cause this year. More details are given in **Annex 3.3**.

3.9 Based on the outcome of full investigations into cases, the top four forms of maladministration substantiated or partially substantiated were:

- ineffective control (26.0%);
- delay/inaction (21.1%);
- error, wrong advice or decision (19.2%); and
- failure to follow procedures (9.6%);

followed by "faulty procedures" and "negligence, omission", each comprising 7.7% of all cases. More details are given in **Annex 3.8**.

Most Popular Targets of Complaint

3.10 The most popular targets of complaint are presented by the league of "top ten" organisations most frequently complained against (see **Annex 3.6**). The listing in the league is based on the number of complaints we pursued and concluded during the year. The first six were the same as in last year, with the Housing Department and Food and Environmental Hygiene Department again topping the league, followed by the Lands Department. The Transport Department and Buildings Department swapped their positions as the fourth and fifth, which could be attributable to a group of over 40 topical complaints against the Buildings Department. The Social Welfare Department, on the seventh position last year, became the tenth this year, again owing to groups of topical complaints received against the Education Bureau, the Post Office and the Fire Services Department during the year, making them the seventh, eighth and ninth organisations respectively.



Outcome of Investigations and Inquiries



3.11 We concluded 226 complaints by full investigation this year, including 30 secondary cases of two groups of topical complaints. Among the 226 cases, 81 (35.8%) were *substantiated, partially substantiated* or *unsubstantiated but other inadequacies found*. The outcome of our full investigations is summarised in **Table 3e**.

Table 3e

Substantiation Rates of Complaints Concluded by Full Investigation

Classification	No. of complaints	Percentage
Substantiated	29	12.8%
Partially substantiated	30	13.3%
Unsubstantiated but other inadequacies found	22	9.7%
Unsubstantiated	142	62.8%
Inconclusive	3	1.4%
Total	**226**	**100.0%**

3.12 Among the 2,740 inquiry cases concluded, inadequacies or deficiencies were found in 475 (17.3%). Details are in **Annex 3.9**.

Direct Investigation

3.13 During the year we completed eight direct investigations. The issues examined included display of building numbers, fire safety measures for New Territories Exempted Houses, leaks of private water pipes, management of Permitted Burial Grounds, waiting time for public rental housing, implementation of strengthened control of exhaust emissions, booking and use of community halls/centres, and implementation of the Fire Safety (Buildings) Ordinance. Thirteen direct investigations were in progress at the end of the year.

3.14 To enhance the transparency and public understanding of our work, this year we changed our approach to direct investigations. Under this new approach, instead of ending most of our preliminary inquiries as "direct investigation assessments", we will develop the more substantial inquiries into direct investigations and, upon completion, publish the investigation reports.

3.15 A list of the direct investigations completed is in **Annex 5**.



Recommendations

3.16 We made 227 recommendations on completion of 226 full investigations and 50 recommendations in eight direct investigations. Of the total 277 recommendations, 236 (85.2%) have been accepted by the organisations for implementation and 41 (14.8%) were under consideration as at 31 March 2016.



Our Performance

3.17 As in previous years we arranged all talks and answered all enquiries by telephone and in person within our pledged time frames. For enquiries in writing, we answered 98.3% of them in five working days and 1.3% in six to ten working days. On acknowledging receipt of complaints, we issued acknowledgement within five working days in 99.4% of all complaints received.

3.18 On complaint processing, we concluded 98.3% of the cases falling outside jurisdiction or under restriction within ten working days, as compared with the service pledge of not less than 70%. No case exceeded the target timeframe of 15 working days (see **Table 3f**). For other cases we concluded 84.7% within three months, as compared to the service pledge of not less than 60%. There were only 0.5% (the lowest in the past five years) of the cases not concluded within our pledge timeframe of six months, for reasons such as case complexity, new developments of the case in the mid-stream of the process and delay of organisations under complaint in tendering their replies to us (see **Table 3g**).

3.19 Our performance pledges and record of achievement are listed in **Annex 3.11**.

Table 3f

Processing Time for Cases Outside Jurisdiction or Under Restriction

Year	Response Time		
	Within 10 working days (target: >70%)	Within 11-15 working days (target: <30%)	More than 15 working days
2011/12	89.2%	9.3%	1.5%
2012/13	89.5%	8.7%	1.8%
2013/14	88.9%	9.7%	1.4%
2014/15	90.9%	8.6%	0.5%
2015/16	98.3%	1.7%	0.0%

Table 3g

Processing Time for Other Cases Concluded

Year	Response Time		
	Less than 3 months (target: >60%)	Within 3-6 months (target: <40%)	More than 6 months
2011/12	79.3%	19.8%	0.9%
2012/13	86.3%	12.8%	0.9%
2013/14	81.7%	17.2%	1.1%
2014/15	86.3%	13.1%	0.6%
2015/16	84.7%	14.8%	0.5%

Overview

3.20 The number and pattern of complaints received this year were similar to what we had last year, though the number of topical complaints reduced, with only one group being triggered by an issue of wide public concern. We continued to achieve a high level of efficiency in the delivery of our services. We maintained our effort to promote mediation as a means to resolve complaints that involved no or little maladministration and the number of cases successfully mediated was comparable to the high level attained last year.

3.21 During the year we changed our approach to direct investigation and turned some of our more substantial preliminary inquiries that would previously be concluded as "direct investigation assessments" into direct investigations and, upon completion, publish the investigation reports. In doing so we made our work more transparent to the public.



Chapter 4 Reward and Challenge

Enhancing Quality Administration



4.1 An important way for our Office to assist public organisations to improve their administration is by making recommendations to them on conclusion of our inquiries into complaints. We monitor their implementation of our more significant recommendations until action is completed. The measures introduced by organisations in response to such recommendations came within the following broad categories:

(a) guidelines for clarity, consistency or efficiency in operation;
(b) better arrangements for inter-departmental coordination;
(c) measures for better public enquiry/complaint handling;
(d) measures for better client services;
(e) measures for more effective regulation or control;
(f) clearer and more reasonable rules and charges;
(g) clearer and more timely information to the public; and
(h) training for staff.

4.2 In **Annex 10** are some examples of the improvement measures, which illustrate the wide range of areas of administration covered.

Mediating Disputes

4.3 With continued effort, we maintained the high level of successfully mediated complaints achieved last year. Among the 3,100 cases pursued and concluded during the year, 134 (4.3%) were concluded by mediation, compared to 138 cases (4.6%) last year. A total of 21 Government departments and public organisations voluntarily participated in resolving complaints by mediation (see **Table 4a**). The first two organisations with the largest numbers of successful mediation cases were, same as last year, the Housing Department (23 cases, 17.2%) and the Food and Environmental Hygiene Department (20 cases, 14.9%). The third place was taken by the Leisure and Cultural Services Department (16 cases, 11.9%), replacing the Buildings Department. The Water Supplies Department and the Hong Kong Housing Society, which did not participate in any mediation cases last year, had seven and five successful cases respectively this year.

Table 4a

Successfully Mediated Cases by Organisation (2015/2016)

Organisation(s)	No. of Cases
Housing Department	23
Food and Environmental Hygiene Department	20
Leisure and Cultural Services Department	16
Buildings Department	13
Transport Department	12
Lands Department	11
Water Supplies Department	7
Agriculture, Fisheries and Conservation Department, Hong Kong Housing Society (each with 5 cases)	10
Post Office	4
Highways Department, Social Welfare Department (each with 3 cases)	6
Immigration Department, Judiciary Administration, Registration and Electoral Office (each with 2 cases)	6
Drainage Services Department, Chief Secretary for Administration's Office, Constitutional and Mainland Affairs Bureau, Hong Kong Monetary Authority, Inland Revenue Department, Legal Aid Department (each with 1 case)	6
Total	**134**

4.4 In terms of nature of complaint, most cases successfully mediated concerned complaints about delay/inaction (47 cases, 32.0%), followed by complaints about errors or wrong advice/decisions (37 cases, 25.2%) and lack of response or reply to complainant (22 cases, 15.0%) (see **Table 4b**). The subject matters under complaint of these cases varied widely, including public housing estate management, water seepage, postal delivery services, park and library management, booking of recreational facilities, location filming at country parks and water reservoirs areas, nuisance caused by wild animals and tree management.



Table 4b

Successfully Mediated Cases by Nature of Complaint (2015/2016)

Nature of Complaint	No. of Cases
Delay/inaction	47
Error, wrong advice/decision	37
Lack of response to complaint	22
Ineffective control	19
Poor staff attitude (rudeness, unhelpfulness)	7
Others#	15
Total	**147**

* One complaint case may have more than one nature of complaint

\# "Others" include: "Negligence, omission", "Failure to follow procedures", "Disparity in treatment, unfairness", "Faulty procedures", etc.

4.5 The modes of mediation adopted included face-to-face meetings for more complex cases and telephone mediation for simpler ones. The average processing time was about 19 days, with over 80% of the cases completed within one month. With our intervention by mediation, cases that had been the subject of dispute between the complainant and the organisation under complaint for months were able to be settled within a few weeks or even a few days.

4.6 We sent out questionnaires to the participating parties on successful conclusion of the cases to obtain their feedback on the process. Among those who had returned the questionnaire, 89.6% of the complainants and all of the organisations considered the process to have achieved what they wanted. Most of them were satisfied with the work of our mediators. Eleven complainants and twelve organisations gave additional comments, which were all positive and encouraging. Almost all showed appreciation of the speed with which the dispute was resolved and the performance of our staff as mediator.

4.7 For the five cases not successfully mediated, they were mainly due to the fact that the complainants were not satisfied with the organisations' explanations of their acts under complaint. These cases were subsequently handled by way of inquiry.



Apology in Complaint Resolution

4.8 We encourage public organisations to adopt a more open mind towards making of apologies and are pleased to note that Government has taken concrete steps in drafting apology legislation. Among the complaint cases concluded during the year, 245 had apologies tendered by the organisation under complaint, of which over 90% were tendered after our intervention.

Transparent Government and Access to Information



4.9 The public have always expected Government to be open and accountable. Access to information held by Government is indeed a right of Hong Kong citizens. Hong Kong, however, does not have any legislation governing access to information. In the last two decades, Government has only put in place a Code on Access to Information ("the Code"), which is not legally binding, to commit itself to transparency. We have a mandate to monitor compliance with the Code to ensure that public requests for information would not be unreasonably refused.

4.10 From the complaint cases we have handled, we note that some Government departments are still not conversant with the spirit and requirements of the Code. To enhance Government departments' understanding of the meaning and contents of the Code and to help the public understand their right to information held by Government, we have introduced a new section on our website to recount in simple terms some Code-related complaint cases investigated by us. With continual publication of case summaries, this new section would become in time a repository of reference materials on the subject of access to information.

Government departments or agencies covered by the Code

4.11 During the year, we received 58 Code complaints against Government departments or agencies, compared to 46 last year. It is noteworthy that some of the requesters in those complaint cases were investigative journalists or politicians who wanted to understand how and why Government took certain decisions.

4.12 We concluded a total of 53 cases, including nine cases carried forward from last year. Failings were found in 27 (51%) of those concluded cases. Eleven cases involved unjustifiable refusal, wholly or partly, or imposing unnecessary conditions for provision of the information requested. The most frequently misused reasons for refusal to provide information remained to be confidentiality of third party information and privacy of individuals. Notably in one case, wrongly citing the said reasons, a department unreasonably refused to disclose the name of a Rural Committee Chairman, who in his official capacity once indicated to Government his support for a resettlement proposal. Apart from the above, a significant number of cases (11) involved delay in responding to the requests.



Organisations not covered by the Code



4.13 The Code is applicable to Government departments and a few named Government agencies only. For other public organisations, even those under our jurisdiction, the Code does not apply to them, unless they have voluntarily adopted the Code. When we receive complaints against organisations which have adopted the Code for non-disclosure of information, we would naturally conduct inquiries with reference to the Code. For organisations which have not adopted the Code, we would examine the practices under complaint along the lines of some major principles of the Code, namely, whether the practice:

- supports the spirit of transparency and disclosure and allow non-disclosure only in specified circumstances and on justifiable grounds;
- stipulates reasonable response times for requests for information;
- requires, where a request is to be refused, the requester to be informed of the refusal and the reason for it; and
- provides for a reasonable mechanism for the requester to seek a review of the organisation's decision in respect of his information request.

4.14 We have since 1 April 2014 compiled relevant statistics on scheduled public organisations not covered by the Code, in addition to those covered by the Code.

4.15 During the year, we received six complaints against four organisations not covered by the Code for wrongdoings relating to handling information requests, with two cases each against the Hospital Authority and the Hong Kong Examinations and Assessment Authority and one each against the Hong Kong Housing Society and Vocational Training Council. We concluded five cases during the year, with failings found in four of them. The remaining one was closed after assessment.

Table 4c

Number of Access-to-Information Complaints Received in the Past Five Years

Year	No. of Complaints Received	
	Organisations covered by	Organisations not covered by the Code#
2011/12	39*	–
2012/13	62*	–
2013/14	78	–
2014/15	46*	9
2015/16	58	6

* The figures include cases (four in 2011/12, three in 2012/13 and one in 2014/15) not recognised as such complaints in the year when they were received but so classified on conclusion in the subsequent year.

\# Statistics for this category of cases only started to be kept from the year of 2014/15.



Issues Examined by Direct Investigations

4.16 During the year we completed examination of eight systemic issues in public administration by way of direct investigation ("DI"), as outlined below.

DI on display of building numbers



4.17 The Buildings Ordinance empowers the Commissioner of Rating and Valuation to allocate building numbers and take enforcement action if building owners fail to comply with a Display Order to display the building number. However, many buildings in Hong Kong do not display their building numbers. This not only causes inconvenience to citizens and tourists, but also affects the discharge of public duties such as police operations, ambulance, fire and postal services.

4.18 Our DI found the Rating and Valuation Department not diligent enough to ensure that all buildings in the territory display their correct numbers. We made seven recommendations to the Department for introducing measures to strengthen monitoring of irregularities in the display of building numbers, devise detailed guidelines on enforcement procedures, review working strategy and step up publicity and public education.

DI on fire safety measures for New Territories Exempted Houses ("NTEHs")



4.19 The Building (Planning) Regulations under the Buildings Ordinance stipulate that all buildings shall be provided with an emergency vehicular access to facilitate rescue services. NTEHs are not subject to the Regulations but "A Guide to Fire Safety Requirements for NTEHs" ("the Guide") was introduced by Government since 1 July 2006 as an administrative means to regulate safety measures for NTEHs.

4.20 Our DI found that the Guide did not quite meet the original objective of providing adequate fire safety protection for NTEH residents. Since the introduction of the Guide, in over 90% of the NTEH application cases in which the Lands Department ("Lands D") considered the provision of an emergency vehicular access ("EVA") necessary, no EVA was eventually provided. In cases where provision of EVA is impracticable, the Guide requires the newly built house only to adopt alternative safety measures, disregarding the fact that the pre-existing houses are also subject to the "cumulative effect" caused by the increase in the number of NTEHs.

4.21 We made a total of five recommendations to Lands D and the Fire Services Department, including to comprehensively review the Guide to evaluate whether it is providing adequate protection to NTEH residents against fire hazards, and to step up publicity and education on fire safety among NTEH residents.

DI relating to leaks of private water pipes



4.22 This DI was prompted by complaints received from time to time by this Office against the Water Supplies Department ("WSD") for delays in following up incidents of leaking private water pipes, resulting in wastage of fresh water for prolonged periods.

4.23 We found that WSD had focused on inspections rather than resolving problems in handling incidents of leaking private water pipes, such that the leakage problem often took months or even years to resolve, a much longer time than the average time the department took to repair Government-built water mains (over 90% of those cases were completed within 30 days).

4.24 We made ten recommendations for improvement to WSD, covering its procedures and efficiency in handling complaints about leaking private water pipes, factors to consider in assessing the urgency of water mains repair works, and measures to urge consumers/ owners of private water pipes to take responsibility for repairs.

DI on management of Permitted Burial Grounds ("PBGs")



4.25 The Government introduced in 1983 the "hillside burial policy" and designated about 520 PBGs on various pieces of Government land to regulate the customary burial of deceased indigenous villagers of the New Territories. Over the years, an array of management problems associated with PBGs have emerged, such as unauthorised grave construction and suspected illegal burials of non-indigenous residents in PBGs. This DI examined the current management system and procedures.

4.26 Five major problems were identified: (a) unclear responsibilities and divided authority among the Government departments concerned; (b) loose conditions of the Burial Certificate – no verification of burial locations, no restriction on the size of burial site, and no checks on compliance with the conditions of the Burial Certificate; (c) lax enforcement against illegal burials; (d) little control over grave construction works to minimise harm to the ecology of conservation zones; and (e) lack of long-term planning.

4.27 We made six recommendations for improvement to the Home Affairs Department, the Lands Department, the Food and Environmental Hygiene Department, the Agriculture, Fisheries and Conservation Department, and the Water Supplies Department, covering measures to strengthen the regulation of the boundaries of PBGs, location and size of burial sites, establish a mechanism for monitoring the compliance of stipulated conditions, formulate more effective enforcement strategies, review the current policy, and avoid designating or extending PBGs within conservation zones.

DI relating to information on waiting time for public rental housing ("PRH")



4.28 PRH is Government subsidised housing, which has always been in great demand. Government's target has been to maintain the average waiting time ("AWT") for general applicants at around three years. The data released by the Hong Kong Housing Authority ("HKHA") showed that this target had been largely achieved in the past few years. However, this Office received from time to time complaints about not getting an allocation after waiting for a much longer time. From these complaints, it was noted that the waiting time for different categories of applicants might vary greatly, hence the DI into the release of information on the waiting time for PRH by the Housing Department ("HD"), the executive arm of HKHA.

4.29 Our DI found that the meaning of "general applicants" for which the AWT regularly released by HD is applicable covers those families and elderly one-person applicants who are accorded "priority" arrangement and ordinary families who are not given any priority. The AWT for general applicants is too generalised to fully reflect the real situation. In the absence of other supplementary information, applicants (especially those applicants from ordinary families who are not given any "priority" arrangement) may be misled. Moreover, HD has been conducting a yearly analysis of the housing situation of applicants on the Waiting List. We believe that a little compilation work would turn the information in the analysis report into useful reference for applicants on the crucial factors that may affect their waiting time.

4.30 We recommended that HD consider to release information on the AWT for different types of PRH applicant and make extra efforts to provide applicants with more useful information for them to estimate the waiting time needed for their own applications.

DI relating to control of exhaust emissions



4.31 To improve roadside air quality, the Government has implemented a new emission control measure ("the New Measure") from 1 September 2014 to include nitrogen oxides ("NOx") in the regulatory regime. Under the New Measure, the Environmental Protection Department ("EPD") has set up remote sensing equipment to monitor the levels of NOx and other exhaust gases at various locations throughout the territory. Excessive exhaust emission detected will lead to EPD issuing an Emission Testing Notice to the vehicle owners concerned for their vehicle to be tested with a chassis dynamometer (commonly called a "treadmill") at an EPD Designated Vehicle Emission Testing Centres. Failure to pass the test within specified time may lead to cancellation of the vehicle licences in question by the Transport Department ("TD").

4.32 The New Measure generated public complaints shortly after its implementation because vehicles which had just passed TD's annual examination were caught by EPD for excessive exhaust emission. Our DI revealed that that was due to the fact that the exhaust emission standards adopted by TD in the idle emission test conducted during the annual vehicle examination were different from those adopted in the treadmill test. Besides, the 22 designated Car Testing Centres currently carrying out the annual examination for TD

were not equipped with treadmills. There were also deficiencies on the part of EPD and TD in implementing the New Measure, such as inadequate coordination among the two departments, insufficient training and support for the vehicle maintenance trade, and ineffective publicity. We made 11 recommendations for improvement in these areas.

DI relating to booking and use of facilities of community halls/centres by Home Affairs Department ("HAD")



4.33 HAD provides facilities in community halls/centres ("the Facilities") primarily for the organisation of community-building activities. It is important to ensure that potential organisers of such activities have a fair chance to use the Facilities and that abuse and wastage is minimised. HAD has drawn up a set of guiding principles for managing the booking and use of the Facilities for reference of its District Offices ("DOs"). However, we received from time to time complaints against HAD for mismanagement of the booking of the Facilities.

4.34 Our DI concluded that HAD should tighten up its control mechanism so that the booking system would be better administered along the principle of fairness, and the Facilities available for use by more people. We made five recommendations for improvement to HAD, including extending booking of the Facilities to individuals, stepping up penalty to organisations for non-compliance with the conditions of use, exploring the feasibility of operating the demerit points system on a cross-district basis, and instructing DOs to tighten up supervision over the use of the Facilities.

DI relating to implementation of the Fire Safety (Buildings) Ordinance



4.35 The Fire Safety (Buildings) Ordinance ("the Ordinance") came into effect in July 2007 to provide better protection from the risk of fire for the occupants and users of, and visitors to old composite and domestic buildings completed before March 1987 ("target buildings"), following a number of deadly fires involving these buildings in the 1990s. Under the Ordinance, the fire service installation or equipment of the target buildings have to be upgraded to meet present-day fire safety standards. The Fire Services Department ("FSD") and the Buildings Department ("BD"), who are the enforcement authorities, will issue Fire Safety Directions ("the Directions") to owners of the target buildings requiring them to upgrade the fire safety facilities of their buildings. However, some owners have expressed difficulty in complying with the Directions due to structural and environmental constraints and lack of assistance from FSD and BD.

4.36 Our DI found that on the whole, FSD and BD have proper arrangements and measures in place to assist owners of the target buildings to comply with the Directions. However, there is room for improvement in implementation. We made three recommendations to FSD and BD, including better publicity to elderly owners on available financial assistance schemes, better communication with local District Councils, and closer monitoring of cases of unauthorised building works that hinder the upgrading works in the target buildings.

Challenges from Parties

Re-assessment of Cases

4.37 All incoming complaints are first assessed as to whether we can or should take up in accordance with the provision of The Ombudsman Ordinance. Complaints that are legally out of bounds or otherwise inappropriate for us to investigate will be screened out. Complainants disagreeing with our decision may request to have their cases re-assessed.

4.38 During the year we received 262 requests for re-assessment, with 122 subsequently re-opened for inquiry.

Review of Cases



4.39 For cases concluded after we have examined the issues under complaint, complainants dissatisfied with our findings or conclusions may seek a review. If the complaint provided material new facts or arguments, a review will be conducted.

4.40 This year we received 69 requests for review. We declined 34 requests and conducted 35 reviews. I varied my decision in two cases after review and upheld my original decision for the remaining 33, as shown in **Table 4d**.

Judicial Review and Litigation

4.41 A complainant not satisfied with my decision may, apart from requesting a review by me, seek a judicial review by the court. During the year a complainant who had complained against the Housing Department for not having appropriately handled his report about a drunken man in a public housing corridor applied for judicial review against my decision that his complaint was not substantiated. The application was refused by the judge in February 2016 on paper examination of the application.

4.42 As regards the civil claim by the complainant whose complaint against the Legal Aid Department had been screened out by us and who had taken civil action in 2014 against three Government departments and an outside party as well as The Ombudsman for financial damages, our application to strike out the claim was heard in June 2015. The District Judge dismissed the claim with costs to The Ombudsman.

4.43 Another complainant whose complaint against the Water Supplies Department for excessive water charges and related issues had been found unsubstantiated by this Office filed a claim against the Department and this Office. His claim against this Office was rejected by the Small Claims Tribunal in July 2015. His application for a review of the Tribunal's order was heard and refused in October 2015.

Table 4d

Outcome of Review Cases

Reason / Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	1	–	1	–	–	2
Decision upheld	–	33	–	–	–	33
						35

Challenging Complainant Behaviours

4.44 Unreasonable complainant behaviours are always a challenge to us. In the year we had complainants kept writing to our directorate staff repeatedly to request a review of their cases, sending in voluminous materials in support of their complaints, pursuing very minute details, engaging our case officers in lengthy telephone conversations and making complaints against almost all staff who have handled their cases. While complainants with such behaviours are few, they take up much of our time and effort. We always respond to the challenges with professionalism.

Response Time of Organisations

4.45 Government departments and public organisations generally provide prompt and full responses to our inquiries. However, on occasions some of them did take longer time to respond than expected and sought repeated extensions for reply. Appreciating that there might be difficulties for them in giving early responses, we initiated meetings with their senior managements or heads of the organisation to discuss ways and means to enable them to provide quicker responses. Such meetings produced good results and enhanced mutual understanding between us.



Overview

4.46 Our investigation work continued to be an agent of improvement in public administration. Implementation by public organisations of our recommendations has led to better services to the public, more efficient and reasonable practices and procedures, more effective regulation and control of activities affecting the community, and greater transparency in governance. In particular in the area of transparency this year we created a new section in our website, giving examples of selected cases concerning access to information to highlight the underlying principles of the Code on Access to Information. It is hoped that this would help Government departments understand better the requirements of the Code and the public their right to information.

4.47 The effort to promote mediation as a means to resolve disputes was maintained. It is encouraging that not only the number of cases successfully mediated was comparable to last year, there were quite a few Government departments which had not engaged themselves in mediation in the past years but participated in such a process this year with good results.

4.48 We completed eight direct investigations during the year on a wide range of subjects affecting the community, which attracted prominent media coverage and in some cases editorial commentaries.

4.49 We treasure the support received from both the community and public organisations on our work and would continue to strive for better results in discharging our functions.

Chapter 5 Office Administration

Staffing

5.1 We continued our effort to fortify a solid base of home grown investigation officers by recruiting graduates at the entry rank of Assistant Investigation Officer, offering them a clear career path and early nurturing. In addition, we supplemented our regular workforce with temporary investigation officers who had rich experience in public administration to enhance our capacity in coping with fluctuations in caseload and meeting the service demand for ad hoc projects.

5.2 During the year, we appointed six investigation staff (one at Investigation Officer level and five at Assistant level) through internal promotion and open recruitment. Our organisation chart is at **Annex 11**.

Training

5.3 As in previous years, we continued to attach importance to staff training so as to equip my staff with the skills required for efficient and effective discharge of their duties. Apart from organising our own training workshops, officers were supported to attend training programmes available in the market.

5.4 We organised an induction programme for new recruits to facilitate their integration into the new working environment and enable them to become fully operational as quickly as practicable.

5.5 Building on last year's training, we organised interactive workshops on handling difficult situations in dealings with complainants for both investigation officers and support staff. Another workshop was held to keep our staff abreast of the latest trend and techniques in public communication, focusing on presentation skills and interaction with the media.



Complaint handling workshop



Seminar on presentation skills

Table 5a

Staff Complement

Breakdown of Staff	As at 31.3.2014	As at 31.3.2015	As at 31.3.2016
Directorate	4	4	4
Investigation	61	63	65
Administrative & Support	48	48	51
Total regular staff	**113**	**115**	**120**
Temporary investigation staff: equivalence to full-time posts (total man-days)	1.9 (507)	2 (529)	3 (784)
Grand Total	**114.9**	**117**	**123**

5.6 On our invitation, the Mandatory Provident Fund Schemes Authority ("MPFA"), Office of the Privacy Commissioner for Personal Data ("PCPD") and Independent Commission Against Corruption ("ICAC") provided briefings to us to keep us abreast of the legal requirements relevant to our work.



Sharing by PCPD

5.7 To enhance our exposure to best practices in complaint handling in different jurisdictions, a small delegation headed by the Deputy Ombudsman attended the Board of Directors Meeting of the Asian Ombudsman Association cum International Training Workshop in Tokyo, Japan in March 2016.



Training workshop in Tokyo

Occupational Health and Safety

5.8 In the year, we continued implementing the Employee Assistance Programme to promote and offer necessary coaching and counselling to our staff in achieving personal and professional effectiveness as well as work-life balance. Two wellness promotion workshops were held to equip our staff with techniques and tips in staying healthy.



Wellness promotion workshops



Talk by MPFA

5.9 To ensure a healthy working environment is provided to our staff, we participated in the Indoor Air Quality Certification Scheme for Offices and Public Places in July 2014 and have attained the "Good" class certification since then. In addition, we conducted testing of water supply in our offices in September/October 2015 to ensure that the quality of our drinking water is up to standard.

Complaints against the Office

5.10 This year, we concluded a total of 43 complaints against the manner of our staff and/or our work procedures. Of these, two were found partially substantiated. On each occasion, we provided appropriate counselling to the officers concerned.

5.11 About 60% of the complaints against this Office arouse from dissatisfaction with our conclusions and decisions on their cases against Government departments and public organisations. In fact, these are the comments on our findings and do not reflect on the quality of our inquiries. Nevertheless, we have in place a mechanism for review of our findings. Where there are reasonable grounds for re-assessment or review, we will do so. In any event, we take every comment of the public as an opportunity to review our practices afresh and would strive to improve our services continually.

Table 5b

Complaints against the Office concluded in 2015/16

Classification	No. of complaints concluded	Percentage
Substantiated	0	0.0%
Partially-substantiated	2	4.7%
Unsubstantiated	41	95.3%
Total	**43**	**100.0%**



Indoor Air Quality Certificate Award Ceremony cum Technical Seminar 2015



Chapter 6 Publicity and External Relations

6.1 Publicity is an indispensable part of our work. Throughout the year, we carried out a diverse range of promotional activities and explored new channels to engage our stakeholders in order to promote fairness and efficiency in public administration in Hong Kong.

Public Education and Promotion

Publicity Campaign

6.2 This year, we continued the campaign of "Say NO to Maladministration". The campaign used the metaphor of Tai-Chi, a Chinese traditional physical exercise, to illustrate maladministration and educated the public to lodge complaints against Government departments and public organisations through proper channels and with justifications. The TV commercial is shown on local television, radio, public transport as well as print advertisement at bus station shelters and in train carriages to amplify the message.



Train carriage advertisement



Bus shelter advertisement



Press conference

Press Conferences and Media Events

6.3 Mass media is no doubt an effective channel to disseminate significant findings of our investigations to the public. During the year, we announced the results of nine direct investigation reports and two investigation reports on complaint cases. We also declared the initiation of eight direct investigations to gauge public opinions. The positive feedback and wide coverage of our findings gave due recognition to our work. I held four press conferences and hosted a media gathering. I also attended various media interviews to leverage on the extensive reach of the media for publicity and public education.



Poster of "Say NO to Maladministration"



Media gathering



Media interview

Table 6a

Press Conferences/Media Events	
14 April 2015	Declaration of direct investigation into Government's implementation of strengthened control of exhaust emissions from petrol and LPG vehicles
7 May 2015	Declaration of direct investigation into Lands Department's system of regularisation of illegal occupation of Government land and breach of lease conditions
28 May 2015	Announcement of findings of direct investigations on: i) Rating and Valuation Department's regulation of display of building numbers ii) The safety regulation of eco-friendly refrigerants
16 July 2015	Media gathering
14 August 2015	Radio interview on updated statistics of our work and case sharing
20 August 2015	Announcement of findings of direct investigations on: i) Water Supplies Department's mechanism for handling leaks of private water pipes ii) Regulation of fire safety measures for New Territories exempted houses
4 September 2015	Declaration of direct investigation into Government's handling of stonewall trees on Bonham Road
19 October 2015	Declaration of direct investigation into Immigration Department's mechanism for following up on unregistered birth cases
10 December 2015	Announcement of findings of direct investigations on: i) Method of calculation of waiting time for public rental housing and release of information ii) Management of permitted burial grounds
7 January 2016	Declaration of direct investigation into the management of markets by the Food and Environmental Hygiene Department
12 January 2016	Declaration of direct investigation into Leisure and Cultural Services Department's criteria and procedures for procuring and withdrawing library materials
28 January 2016	Announcement of findings of: i) Direct investigation on Government's implementation of strengthened control of exhaust emissions from petrol and LPG vehicles ii) Investigation of complaints on handling of food safety complaints by Food and Environmental Hygiene Department
2 February 2016	Declaration of direct investigation into arrangements on display of publicity materials in public housing estates of the Housing Department
10 February 2016	Radio interview on the improvement of quality and efficiency of public sector by implementing the Office's recommendations
10 March 2016	Declaration of direct investigation into the mechanism of the Food and Health Bureau and the Department of Health for handling smoking offences
23 March 2016	Announcement of findings of direct investigations on: i) Home Affairs Department's management of booking and use of facilities of community halls and community centres ii) Problems relating to enforcement of Fire Safety (Buildings) Ordinance

Selected Cases Relating to Code on Access to Information Available Online

6.4 We have launched on our website a new section of "Selected cases relating to Code on Access to Information". It serves to enhance the public's understanding of their right to information kept by Government departments and some public organisations. At the same time, departments and organisations could take the cases as reference in handling future requests for information from the public.



Selected cases relating to Code on Access to Information are now available on the Office's website

Launch of RSS Service

6.5 Really Simple Syndication ("RSS") service was launched on our website. Members of the public can easily subscribe to the free RSS feeds with just a few clicks and get hold of the latest information of the Office such as OmbudsNews, press releases and investigation reports. Once subscribed, the new service saves a lot of time of the public to access and check our website for new content.



New RSS service on the Office's website

Talks for Departments and Organisations

6.6 To enhance communication and mutual understanding, we conducted nine outreach talks to different Government departments and organisations throughout the year. We shared with public officers our mission, procedures and experience on complaint handling.



Talk for Government department

Working with Professionals, Community Leaders, etc.

Advisers and JPs

6.7 We value the professional advice from our Advisers and Justices of the Peace ("JPs") under the JPs Assistance Scheme. Their staunch and continued support has facilitated the Office to efficiently discharge our functions. In June 2015, we organised a seminar on "Private Building Management" for our Advisers and the JPs. On the occasion, our colleagues, a speaker from Home Affairs Department and the audience had a fruitful interaction on the subject.



Seminar of "Private Building Management"

Legislative and District Councillors

6.8 I meet Members of the Legislative Council annually to update them on our work. This year's meeting was held on 8 December 2015 and we had a fruitful exchange of views on issues of public concern.

The Ombudsman's Awards

6.9 Quality public service was often achieved through conscientious efforts that went unnoticed. The Ombudsman's Awards are presented every year to honour the meritorious performance of Government departments and public organisations in handling complaints and serving the public. This year, the Grand Award went to the Immigration Department, whereas the Correctional Services Department and the Legal Aid Department were the runners-up. 50 public officers received individual awards at the ceremony. Over 200 guests attended the presentation ceremony on 29 October 2015 to share and express appreciation to the award recipients.



The Ombudsman's Awards presentation ceremony

Table 6b

Winning Organisations for 2015
Immigration Department – Grand Award
Correctional Services Department
Legal Aid Department

Table 6c

Individual Awards for 2015

Organisation	No. of Awardees
1823, Efficiency Unit	1
Airport Authority	2
Buildings Department	1
Civil Engineering and Development Department	2
Companies Registry	2
Consumer Council	2
Correctional Services Department	1
Customs and Excise Department	1
Department of Health	1
Drainage Services Department	2
Electrical and Mechanical Services Department	1
Employees Retraining Board	1
Equal Opportunities Commission	1
Estate Agents Authority	2
Fire Services Department	1
Food and Environmental Hygiene Department	1
Highways Department	2
Home Affairs Department	2
Hong Kong Examinations and Assessment Authority	2
Hospital Authority	2
Immigration Department	2
Inland Revenue Department	1
Judiciary	1
Land Registry	1
Legal Aid Department	1
Mandatory Provident Fund Schemes Authority	2
Marine Department	2
Planning Department	1
Post Office	2
Securities and Futures Commission	1
Social Welfare Department	2
Water Supplies Department	2
Working Family and Student Financial Assistance Agency	2

Overseas and Mainland Liaison

6.10 We maintain close ties with our counterparts worldwide. In September 2015, I was elected as a Director of the International Ombudsman Institute ("IOI") and attended the Board Meeting held in Namibia.



IOI Board Meeting in Namibia

6.11 As Honorary Secretary of Asian Ombudsman Association ("AOA"), I attended the AOA Conference and its Board of Directors Meetings in Pakistan in November 2015. I was re-elected as the Honorary Secretary of AOA for another term of four years in the AOA General Assembly. I also delivered a speech on "Secrecy vs Transparency" in the Conference, sharing my views and the experience of our Office with other ombudsman institutions in Asia.



AOA Board of Directors meetings and General Assembly in Pakistan

6.12 My Deputy attended, on my behalf, the AOA Board Meeting in Japan in March 2016. He also led a team of four to attend the International Training Workshop to sharpen their skills in investigation and keep abreast of the development and practice in different ombudsman organisations in the world.



International Training Workshop in Japan

6.13 We welcome visiting delegations from overseas and the mainland. During the year under report, we received 34 group visits. Through interactive sharings, we learned from each other on the practices of public administration and supervision. The list of visitors is at **Annex 13**.



Visit of Mr Wan Chun, Director of the Law and Policy Research Officer, Supreme People's Procuratorate



Visit of Mr M Salman Faruqui, AOA President and Federal Ombudsman of Pakistan

Looking Ahead

6.14 To get our messages across to the public, we are collaborating with Radio Television Hong Kong to produce a television programme with five episodes, to be broadcast in April 2016. We spare no effort to engage our stakeholders and promote the work of this Office through traditional and creative means.



Press Conferences



28 May 2015



10 Dec 2015



28 Jan 2016



Media gathering on 16 Jul 2015



Presentation ceremony of The Ombudsman's Awards on 29 Oct 2015



Seminar for Advisers and JPs on 25 Jun 2015



Our Investigation Officers delivered outreach talks to departments and organisations



Mr Cheong Weng Chon, the Commissioner Against Corruption of Macao and his delegation visited the Office on 12 May 2015



President of Asian Ombudsman Association ("AOA") and also Federal Ombudsman of Pakistan, Mr M Salman Faruqui, visited the Office on 17 Mar 2016



Mr Fu Kui, Director General of the International Cooperation Bureau of the Central Commission for Discipline Inspection and the Ministry of Supervision visited the Office on 14 May 2015

One Year at a Glance



As Honorary Secretary of the AOA, The Ombudsman conducted a speech on "Secrecy vs Transparency" in Pakistan on 25 Nov 2015



The Ombudsman attended the International Ombudsman Institute Board of Directors Meeting in Windhoek, Namibia on 21-23 Sep 2015



The Ombudsman as Judge of the Inter-collegiate Debate Competition 2015 on 2 May 2015



The Ombudsman gave a keynote speech at the Graduation Ceremony of the Chung Chi College, The Chinese University of Hong Kong on 19 Nov 2015



The Deputy Ombudsman and four officers attended the International Training Workshop in Tokyo on 8-10 Mar 2016


SLOW



Annual Report of The Ombudsman, Hong Kong 2016

Annexes



List of Scheduled Organisations



Organisations Listed in Part I of Schedule 1, Cap. 397

	Organisation	Abbreviation
1	Agriculture, Fisheries and Conservation Department	AFCD
2	Airport Authority	AA
3	All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility	JA
4	Architectural Services Department	Arch SD
5	Audit Commission	Aud
6	Auxiliary Medical Service	AMS
7	Auxiliary Medical Service (Government department)	AMS
8	Buildings Department	BD
9	Census and Statistics Department	C & SD
10	Civil Aid Service	CAS

	Organisation	Abbreviation
11	Civil Aid Service (Government department)	CAS
12	Civil Aviation Department	CAD
13	Civil Engineering and Development Department	CEDD
14	Companies Registry	CR
15	Competition Commission	Com C
16	Consumer Council	CC
17	Correctional Services Department	CSD
18	Customs and Excise Department	C&ED
19	Department of Health	DH
20	Department of Justice	D of J
21	Drainage Services Department	DSD
22	Electrical and Mechanical Services Department	E & MSD
23	Employees Retraining Board	ERB
24	Environmental Protection Department	EPD
25	Equal Opportunities Commission	EOC
26	Estate Agents Authority	EAA
27	Financial Reporting Council	FRC
28	Fire Services Department	FSD
29	Food and Environmental Hygiene Department	FEHD
30	General Office of the Chief Executive's Office	GOCEO
31	Government Flying Service	GFS
32	Government Laboratory	Govt Lab
33	Government Logistics Department	GLD
34	Government Property Agency	GPA
	Government Secretariat	GS
35	– Chief Secretary for Administration's Private Office	GS-CSAPO
36	– Chief Secretary for Administration's Office	GS-CS
37	– Civil Service Bureau	GS-CSB

List of Scheduled Organisations

	Organisation	Abbreviation
38	– Commerce and Economic Development Bureau	GS-CEDB
39	– Constitutional and Mainland Affairs Bureau	GS-CMAB
40	– Development Bureau	GS-DEVB
41	– Education Bureau	GS-EDB
42	– Environment Bureau	GS-ENB
43	– Financial Secretary's Private Office	GS-FSPO
44	– Financial Secretary's Office	GS-FS OFF
45	– Financial Services and the Treasury Bureau	GS-FSTB
46	– Food and Health Bureau	GS-FHB
47	– Home Affairs Bureau	GS-HAB
48	– Innovation and Technology Bureau	GS-ITB
49	– Labour and Welfare Bureau	GS-LWB
50	– Security Bureau	GS-SB
51	– Transport and Housing Bureau	GS-THB
52	Highways Department	Hy D
53	Home Affairs Department	HAD
54	Hong Kong Arts Development Council	HKADC
55	Hong Kong Housing Authority	HKHA
56	Hong Kong Housing Society	HKHS
57	Hong Kong Monetary Authority	HKMA
58	Hong Kong Observatory	HKO
59	Hong Kong Sports Institute Limited	HKSIL
60	Hospital Authority	HA
61	Housing Department	HD
62	Immigration Department	Imm D
63	Information Services Department	ISD
64	Inland Revenue Department	IRD

	Organisation	Abbreviation
65	Intellectual Property Department	IPD
66	Invest Hong Kong	Invest HK
67	Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service	SCCS
68	Kowloon-Canton Railway Corporation	KCRC
69	Labour Department	LD
70	Land Registry	LR
71	Lands Department	Lands D
72	Legal Aid Department	LAD
73	Legislative Council Secretariat	LCS
74	Leisure and Cultural Services Department	LCSD
75	Mandatory Provident Fund Schemes Authority	MPFA
76	Marine Department	MD
77	Office of the Communications Authority	OFCA
78	Official Receiver's Office	ORO
79	Planning Department	Plan D
80	Post Office	PO
81	Privacy Commissioner for Personal Data	PCPD
82	Radio Television Hong Kong	RTHK
83	Rating and Valuation Department	RVD
84	Registration and Electoral Office	REO
85	Securities and Futures Commission	SFC
86	Social Welfare Department	SWD
87	The Hong Kong Examinations and Assessment Authority	HKEAA
88	Trade and Industry Department	TID
89	Transport Department	TD
90	Treasury	Try

List of Scheduled Organisations

	Organisation	Abbreviation
91	University Grants Committee, Secretariat	UGC
92	Urban Renewal Authority	URA
93	Vocational Training Council	VTC
94	Water Supplies Department	WSD
95	West Kowloon Cultural District Authority	WKCDA
96	Working Family and Student Financial Assistance Agency	WFSFAA

Organisations Listed in Part II of Schedule 1, Cap. 397

	Organisation	Abbreviation
1	Independent Commission Against Corruption	ICAC
2	Hong Kong Auxiliary Police Force	HKAPF
3	Hong Kong Police Force	HKPF
4	Secretariat of the Public Service Commission	PSC

Circumstances where Complaints are not Followed Up or Investigated



Actions not Subject to Investigation – Schedule 2, Cap. 397

1. Security, defence or international relations
2. Legal proceedings or prosecution decisions
3. Exercise of powers to pardon criminals
4. Contractual or other commercial transactions
5. Personnel matters
6. Grant of honours, awards or privileges by Government
7. Actions by the Chief Executive personally
8. Imposition or variation of conditions of land grant
9. Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
10. Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

Restrictions on Investigation of Complaints – section 10 (1), Cap. 397

1. Complainant having knowledge of subject of complaint for more than two years
2. Complaint made anonymously
3. Complainant not identifiable or traceable
4. Complaint not made by person aggrieved or suitable representative
5. Subject of complaint and complainant having no connection with Hong Kong
6. Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

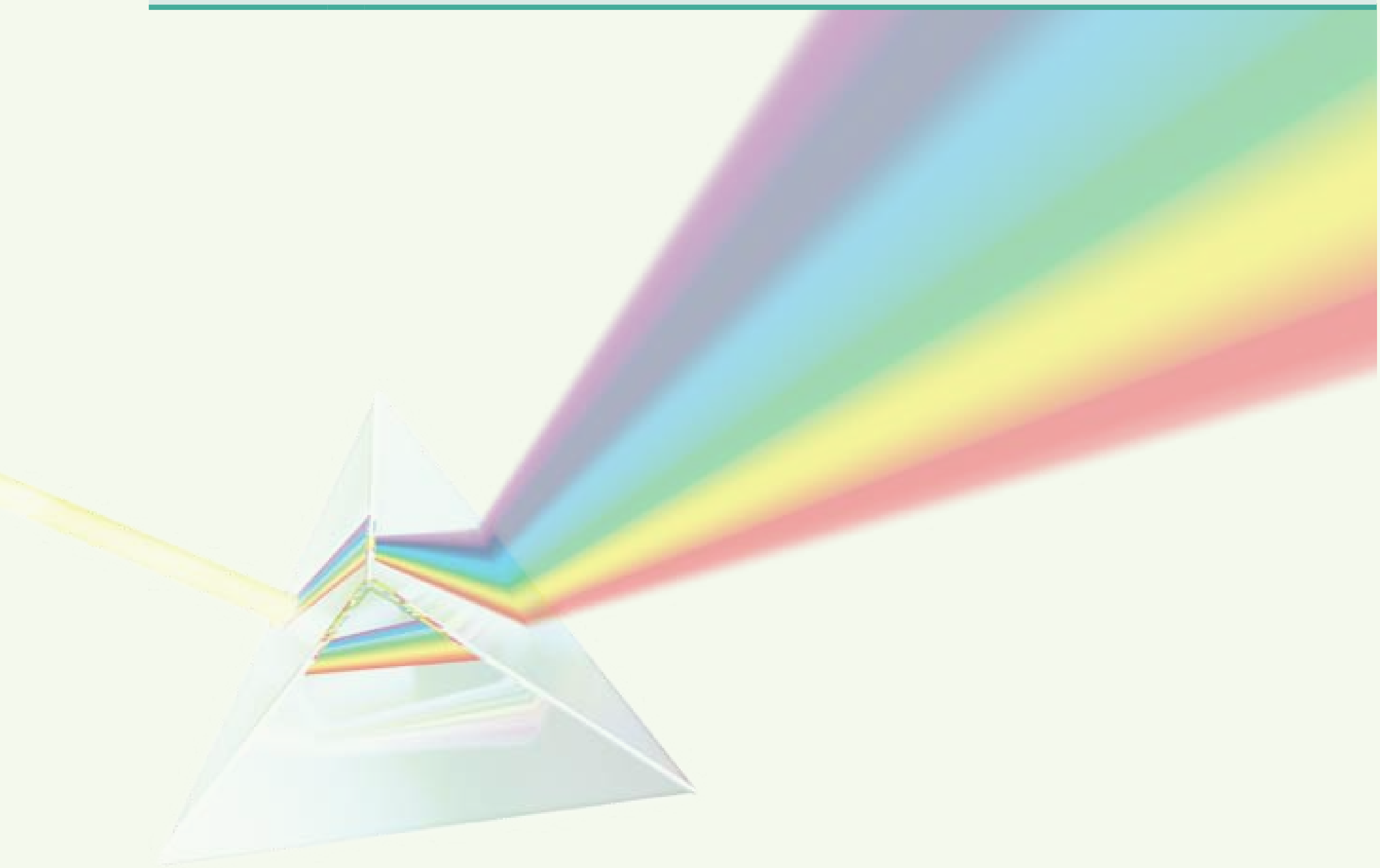
Circumstances where The Ombudsman may Decide not to Investigate – section 10 (2), Cap. 397

1. Investigation of similar complaints before revealed no maladministration
2. Subject of complaint is trivial
3. Complaint is frivolous or vexatious or is not made in good faith
4. Investigation is, for any other reason, unnecessary

Statistics

Annex 3

Annex 3.1	–	Caseload
Annex 3.2	–	Enquiries/Complaints Received
Annex 3.3	–	Nature of Complaints Processed
Annex 3.4	–	Distribution of Enquiries/Complaints Received
Annex 3.5	–	Distribution of Complaints Completed
Annex 3.6	–	Complaints Pursued and Concluded: Top Ten Organisations
Annex 3.7	–	Results of Complaints Concluded by Full Investigation
Annex 3.8	–	Forms of Maladministration Substantiated by Full Investigation
Annex 3.9	–	Results of Complaints Concluded by Inquiry
Annex 3.10	–	Complaint Processing Time
Annex 3.11	–	Achievement of Performance Pledges



Caseload

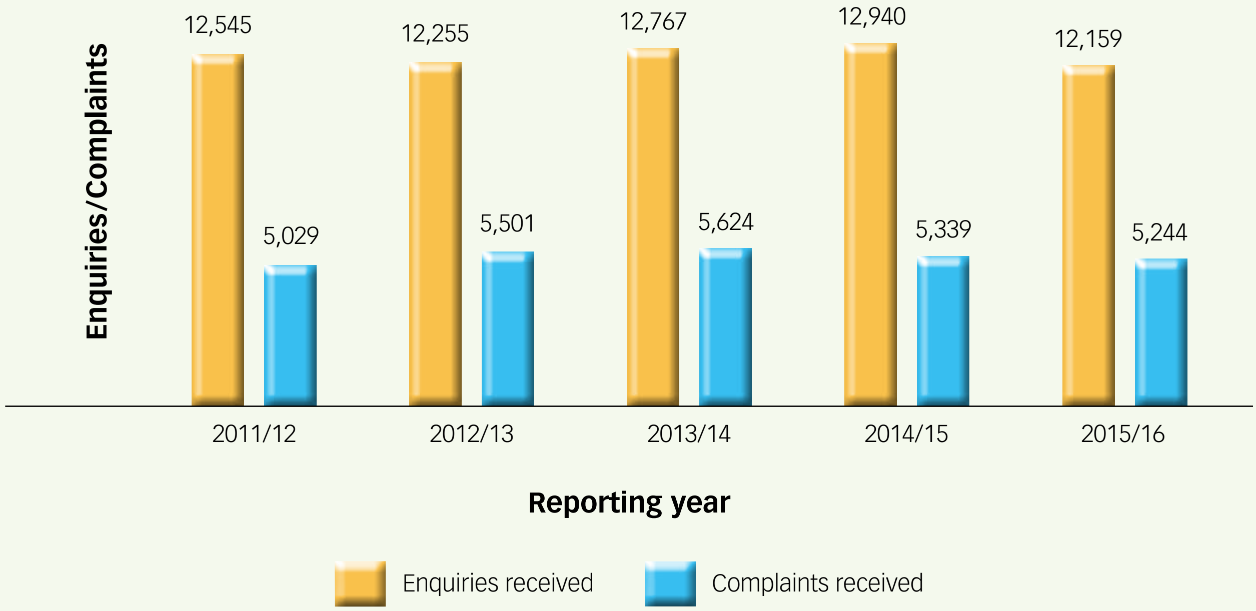
	Reporting year[1]				
	11/12	12/13	13/14	14/15	15/16
Enquiries	**12,545**	**12,255**	**12,767**	**12,940**	**12,159**
Complaints					
(a) For processing	**6,085**	**6,349**	**6,572**	**6,241**	**6,112**
– Received	5,029[180]	5,501[238]	5,624[398]	5,339[428]	5,244[213]
– Brought forward	1,056	848	948	902	868
(b) Completed	**5,237[210]**	**5,401[235]**	**5,670[367]**	**5,373[472]**	**5,242[224]**
Pursued and concluded					
– By inquiry[2]	2,731[7]	2,383[196]	2,605[36]	2,573[78]	2,740[175]
– By full investigation[3]	163[61]	169	321[12]	314[125]	226[30]
– By mediation[4]	22[16]	22	38	138	134
Assessed and closed					
– Insufficient grounds to pursue[5]	1,156[84]	1,908[32]	1,432[192]	1,091[1]	1,187[4]
– Legally bound[6]	1,165[42]	919[7]	1,274[127]	1,257[268]	955[15]
(c) Percentage completed = (b)/(a)	**86.1%**	**85.1%**	**86.3%**	**86.1%**	**85.8%**
(d) Carried forward = (a) – (b)	**848**	**948**	**902**	**868**	**870**
Direct investigations completed	**5**	**6**	**6**	**7**	**8**

Note 1. From 1 April to 31 March of the next year.
Note 2. Pursued under section 11A of The Ombudsman Ordinance, for general cases.
Note 3. Pursued under section 12 of The Ombudsman Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.
Note 4. Pursued under section 11B of The Ombudsman Ordinance, for cases involving no, or only minor, maladministration.
Note 5. Not pursued but closed for reasons such as lack of *prima facie* evidence, organisation concerned is taking action, mere expression of opinion.
Note 6. Outside the Office's jurisdiction or restricted by The Ombudsman Ordinance.
[ ] Number of topical cases.

– See "Glossary of Terms" for detailed definitions of the above terms

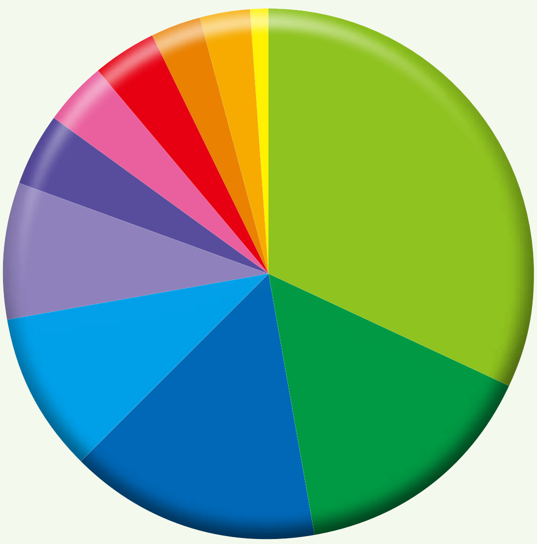
Enquiries/Complaints Received

Annex 3.2



Nature of Complaints Processed

Annex 3.3



- 32.1% Error, wrong advice/decision
- 15.3% Ineffective control
- 15.1% Delay/inaction
- 9.8% Others (e.g. unclear allegation, general criticism, opinion)
- 8.3% Lack of response/reply to complainant/enquirer
- 4.5% Poor staff attitude (e.g. rudeness, unhelpfulness)
- 4.0% Failure to follow procedures
- 3.7% Faulty procedures
- 3.2% Negligence, omission
- 3.0% Disparity in treatment, unfairness
- 1.0% Abuse of power

Distribution of Enquiries/ Complaints Received

Annex 3.4

Organisation	Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	53	33
Airport Authority	11	8
Architectural Services Department	17	14
Audit Commission	6	1
Auxiliary Medical Service	5	5
Buildings Department	355	338
Census and Statistics Department	4	4
Civil Aid Service	3	0
Civil Aviation Department	15	12
Civil Engineering and Development Department	4	11
Companies Registry	19	12
Consumer Council	34	22
Correctional Services Department	40	54
Customs and Excise Department	65	47
Department of Health	77	47
Department of Justice	17	25
Drainage Services Department	21	23
Electrical and Mechanical Services Department	53	28
Employees Retraining Board	8	2
Environmental Protection Department	74	66
Equal Opportunities Commission	42	25
Estate Agents Authority	11	8
Financial Reporting Council	1	0
Fire Services Department	74	95
Food and Environmental Hygiene Department	739	589
General Office of the Chief Executive's Office	7	4
Government Flying Service	0	1
Government Laboratory	1	0

Distribution of Enquiries/ Complaints Received

Organisation	Enquiries	Complaints
Government Logistics Department	7	2
Government Property Agency	7	9
Government Secretariat		
– Chief Secretary for Administration's Office	127	71
– Civil Service Bureau	12	13
– Commerce and Economic Development Bureau	10	5
– Constitutional and Mainland Affairs Bureau	5	6
– Development Bureau	9	16
– Education Bureau	116	145
– Environment Bureau	6	2
– Financial Secretary’s Office	1	1
– Financial Secretary’s Private Office	1	0
– Financial Services and the Treasury Bureau	14	10
– Food and Health Bureau	7	5
– Home Affairs Bureau	12	13
– Innovation and Technology Bureau	5	3
– Labour and Welfare Bureau	10	7
– Security Bureau	9	8
– Transport and Housing Bureau	7	28
Highways Department	85	77
Home Affairs Department	121	108
Hong Kong Examinations and Assessment Authority	23	15
Hong Kong Housing Authority	54	17
Hong Kong Housing Society	41	42
Hong Kong Monetary Authority	40	21
Hong Kong Observatory	8	5
Hong Kong Police Force	363	125
Hong Kong Sports Institute Limited	2	2

Organisation	Enquiries	Complaints
Hospital Authority	419	165
Housing Department	1,090	714
Immigration Department	171	112
Independent Commission Against Corruption	11	6
Information Services Department	2	2
Inland Revenue Department	101	57
Intellectual Property Department	4	2
Invest Hong Kong	0	1
Judiciary Administrator	77	61
Labour Department	210	96
Land Registry	8	8
Lands Department	357	341
Legal Aid Department	112	58
Legislative Council Secretariat	5	2
Leisure and Cultural Services Department	202	192
Mandatory Provident Fund Schemes Authority	17	11
Marine Department	17	5
Office of the Communications Authority	29	22
Official Receiver's Office	33	18
Planning Department	13	28
Post Office	94	122
Privacy Commissioner for Personal Data	39	24
Radio Television Hong Kong	10	10
Rating and Valuation Department	36	20
Registration and Electoral Office	40	26
Securities and Futures Commission	17	39
Social Welfare Department	386	152
Trade and Industry Department	12	5

Distribution of Enquiries/ Complaints Received

Organisation	Enquiries	Complaints
Transport Department	274	293
Treasury	13	4
University Grants Committee, Secretariat	1	0
Urban Renewal Authority	23	10
Vocational Training Council	19	8
Water Supplies Department	175	104
West Kowloon Cultural District Authority	0	1
Working Family and Student Financial Assistance Agency	37	27
Total	**6,912**	**4,976**

Note 1. The total number of enquiries and complaints received in Annex 3.1 are 12,159 and 5,244 respectively. They are different from the figures shown in Annex 3.4 because enquiries/complaints involving organisations not falling within Schedule 1 to The Ombudsman Ordinance are not shown in Annex 3.4.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

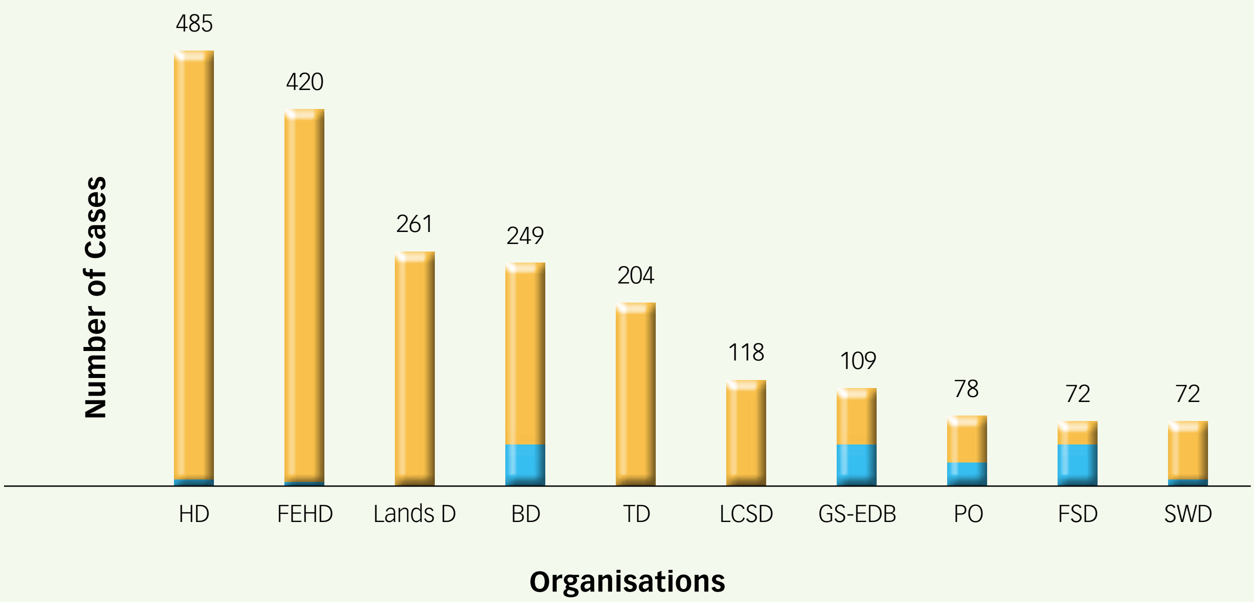
Distribution of Complaints Completed: 5,242 Cases

Annex 3.5



Complaints Pursued and Concluded: Top Ten Organisations

Annex 3.6



Notes

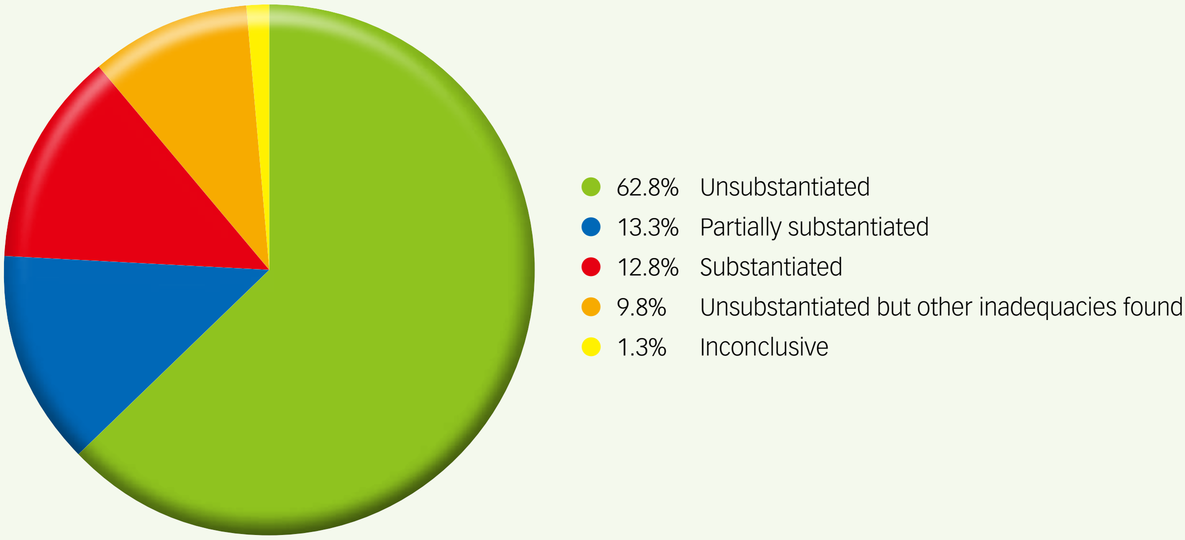
Note 1. "Complaints Pursued and Concluded" are cases handled by way of inquiry, full investigation or mediation.

Note 2. These top ten organisations accounted for 66.7% of the 3,100 complaints pursued and concluded.

Note 3. [blue box] signifies topical complaints (arising from the same social topics).

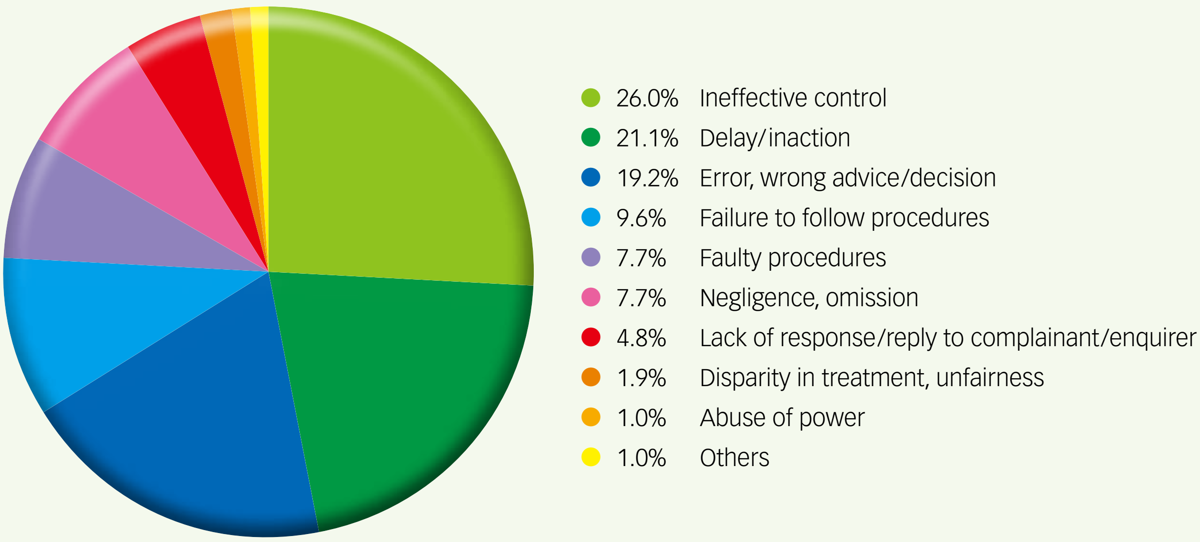
Results of Complaints Concluded by Full Investigation: 226 Cases

Annex 3.7



Forms of Maladministration Substantiated by Full Investigation

Annex 3.8



Results of Complaints Concluded by Inquiry

Annex 3.9

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found
Agriculture, Fisheries and Conservation Department	23	3
Airport Authority	7	0
Architectural Services Department	6	2
Buildings Department	219	64
Census and Statistics Department	2	1
Civil Aviation Department	9	3
Civil Engineering and Development Department	8	0
Companies Registry	5	1
Consumer Council	16	3
Correctional Services Department	28	1
Customs and Excise Department	30	2
Department of Health	33	8
Department of Justice	9	1
Drainage Services Department	14	0
Electrical and Mechanical Services Department	15	2
Employees Retraining Board	1	0
Environmental Protection Department	40	1
Equal Opportunities Commission	8	0
Estate Agents Authority	3	1
Fire Services Department	66	1
Food and Environmental Hygiene Department	361	129
Government Property Agency	8	1
Government Secretariat		
– Chief Secretary for Administration's Office	38	7
– Civil Service Bureau	1	0
– Commerce and Economic Development Bureau	4	1

Results of Complaints Concluded by Inquiry

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found
– Constitutional and Mainland Affairs Bureau	3	2
– Development Bureau	10	1
– Education Bureau	106	6
– Environment Bureau	1	0
– Financial Services and the Treasury Bureau	1	1
– Food and Health Bureau	2	0
– Home Affairs Bureau	8	1
– Innovation and Technology Bureau	1	0
– Labour and Welfare Bureau	5	2
– Security Bureau	3	1
– Transport and Housing Bureau	17	1
Highways Department	46	3
Home Affairs Department	52	5
Hong Kong Examinations and Assessment Authority	9	2
Hong Kong Housing Authority	9	0
Hong Kong Housing Society	31	4
Hong Kong Monetary Authority	9	0
Hong Kong Observatory	1	0
Hong Kong Police Force	15	4
Hospital Authority	26	9
Housing Department	442	35
Immigration Department	47	7
Independent Commission Against Corruption	2	0
Inland Revenue Department	26	11
Judiciary Administrator	26	6
Labour Department	26	3

Organisation	No. of complaints	Cases with inadequacies/ deficiencies found
Land Registry	5	0
Lands Department	224	49
Legal Aid Department	31	2
Legislative Council Secretariat	1	0
Leisure and Cultural Services Department	96	20
Mandatory Provident Fund Schemes Authority	7	0
Marine Department	5	1
Office of the Communications Authority	12	1
Official Receiver's Office	15	1
Planning Department	23	1
Post Office	46	17
Privacy Commissioner for Personal Data	12	2
Radio Television Hong Kong	1	0
Rating and Valuation Department	12	3
Registration and Electoral Office	11	2
Securities and Futures Commission	29	1
Social Welfare Department	67	5
Trade and Industry Department	4	1
Transport Department	177	20
Urban Renewal Authority	11	1
Vocational Training Council	1	0
Water Supplies Department	56	11
Working Family and Student Financial Assistance Agency	16	1
Total	**2,740**	**475**

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by inquiry are not shown.

Complaint Processing Time

Annex 3.10

Overall

Time \ Year	11/12	12/13	13/14	14/15	15/16
Less than 3 months	83.9%	88.6%	85.8%	89.6%	87.5%
3 – 6 months	15.4%	10.7%	13.3%	9.9%	12.1%
More than 6 months	0.7%	0.7%	0.9%	0.5%	0.4%
Total	**5,237**	**5,401**	**5,670**	**5,373**	**5,242**

By Full Investigation and Other Modes

Time \ Year	11/12	12/13	13/14	14/15	15/16
Full investigation					
Less than 3 months	4.9%	2.4%	4.4%	25.5%	1.3%
3 – 6 months	77.9%	78.7%	81.3%	66.2%	90.3%
More than 6 months	17.2%	18.9%	14.3%	8.3%	8.4%
Number of complaints	**163**	**169**	**321**	**314**	**226**
Other modes					
Less than 3 months	86.4%	91.4%	90.7%	93.6%	91.4%
3 – 6 months	13.4%	8.5%	9.2%	6.4%	8.6%
More than 6 months	0.2%	0.1%	0.1%	0.0%	0.0%
Number of complaints	**5,074**	**5,232**	**5,349**	**5,059**	**5,016**

Achievement of Performance Pledges

(1 April 2015 to 31 March 2016)

Annex 3.11

(A) Enquiries

	Response Time		
By telephone or in person	**Immediate**	**Within 30 minutes**	**More than 30 minutes**
	11,926 (100.0%)	0	0
In writing	**Within 5 working days**	**Within 6-10 working days**	**More than 10 working days**
	229 (98.3%)	3 (1.3%)	1 (0.4%)

(B) Complaints*

	Response Time	
Acknowledgement	**Within 5 working days**	**More than 5 working days**
	4,696 (99.4%)	26 (0.6%)

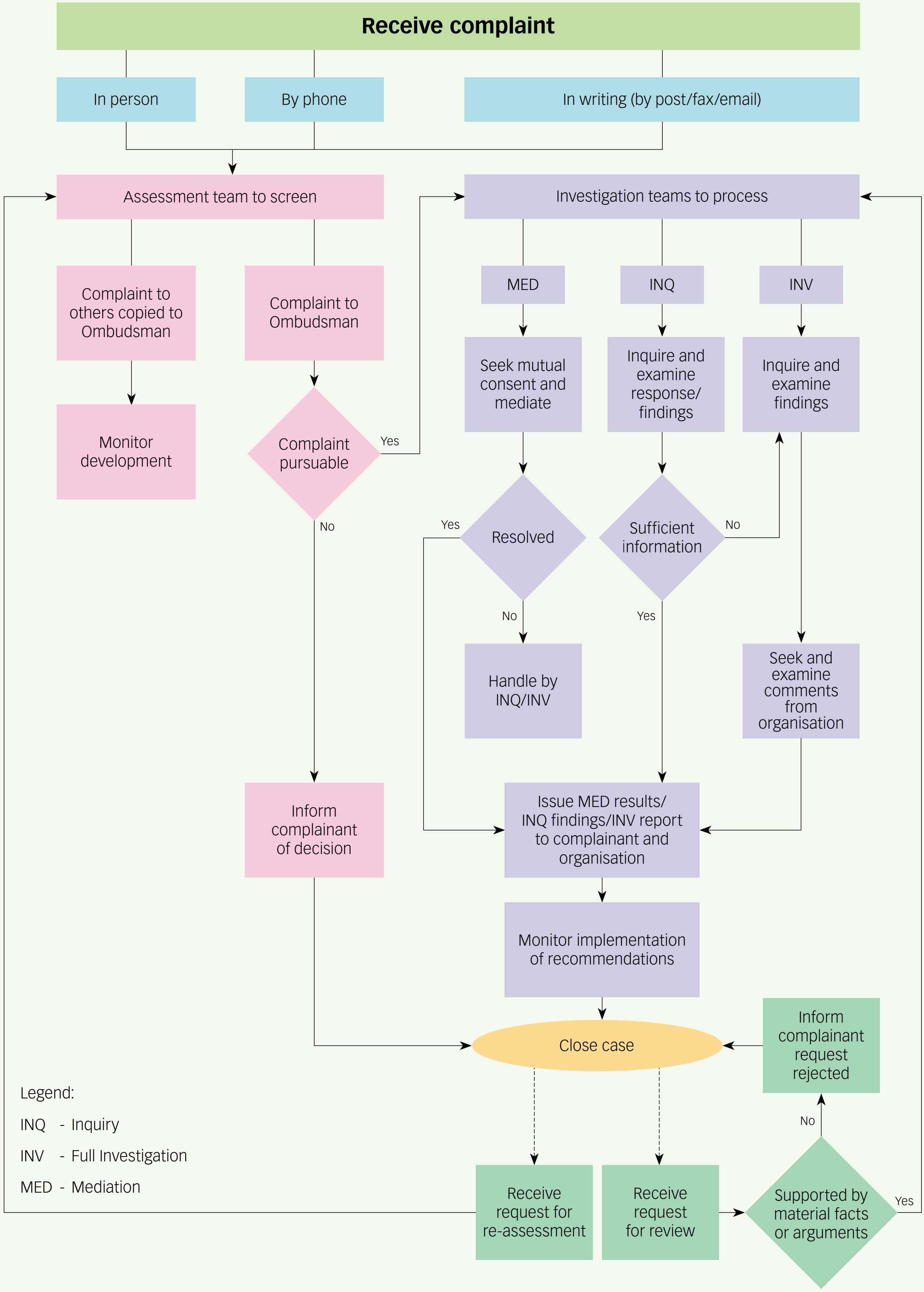
* Excluding cases where acknowledgement is not necessary or practicable.

	Cases outside jurisdiction or under restriction			Other cases		
Cases concluded	**Within 10 working days**	**Within 11-15 working days**	**More than 15 working days**	**Less than 3 months**	**Within 3-6 months**	**More than 6 months**
	939 (98.3%)	16 (1.7%)	0	3,631 (84.7%)	635 (14.8%)	21 (0.5%)
Target	Not less than 70%	Not more than 30%	–	Not less than 60%	Not more than 40%	–

(C) Outreach Talks

	Response Time	
Requests for outreach talks	**Within 10 working days**	**More than 10 working days**
	9 (100.0%)	0

Flow Chart on Handling of a Complaint

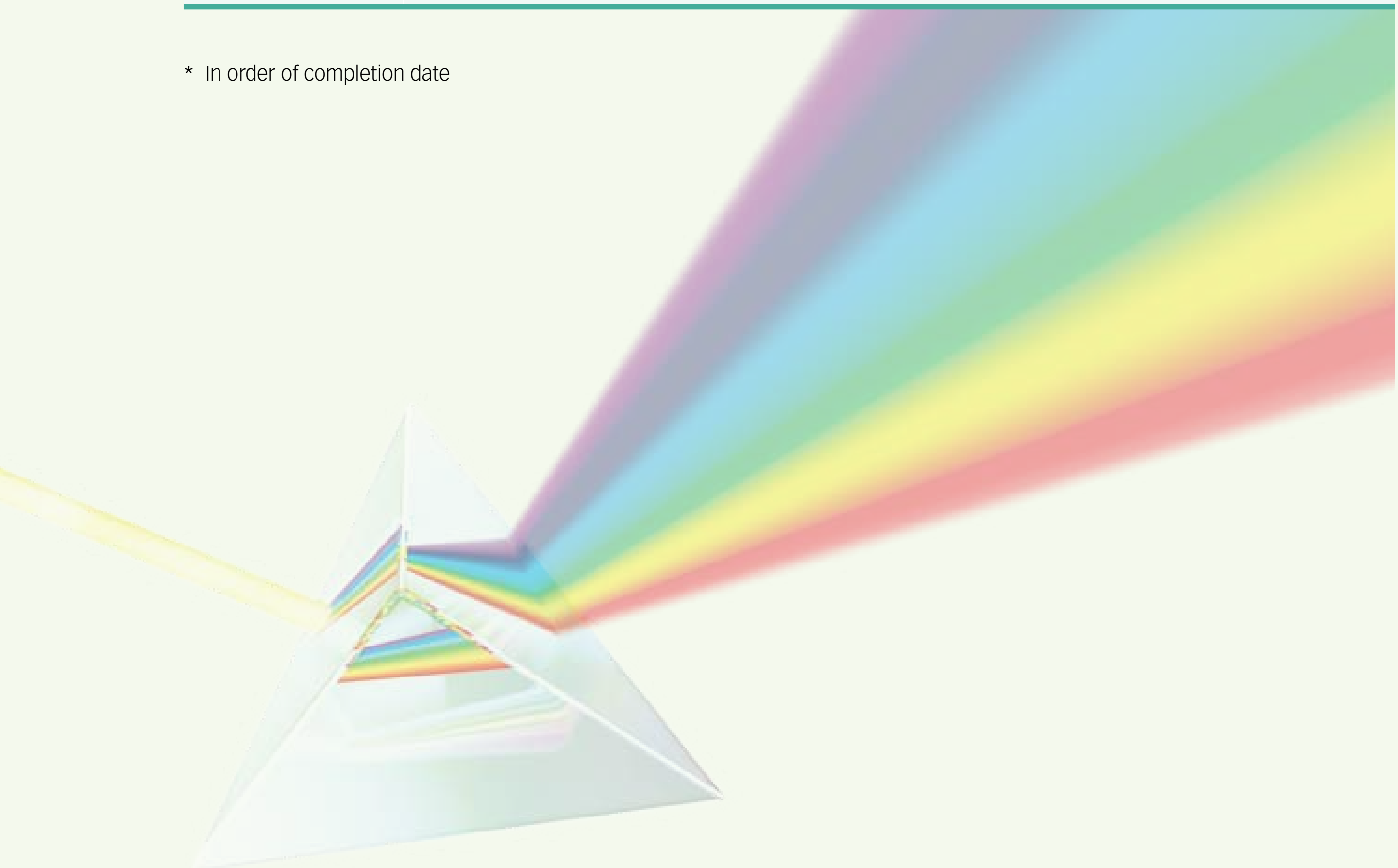


Index of Direct Investigations Completed

Annex 5

Direct Investigations	
OMB/DI/367	Rating and Valuation Department's Regulation of Display of Building Numbers
OMB/DI/342	Regulation of Fire Safety Measures for New Territories Exempted Houses
OMB/DI/364	Water Supplies Department's Mechanism for Handling Leaks of Private Water Pipes
OMB/DI/248	Management of Permitted Burial Grounds
OMB/DI/374	Method of Calculation of Waiting Time for Public Rental Housing and Release of Information
OMB/DI/376	Government's Implementation of Strengthened Control of Exhaust Emissions from Petrol and LPG Vehicles
OMB/DI/380	Problems Relating to Enforcement of Fire Safety (Buildings) Ordinance
OMB/DI/400	Home Affairs Department's Management of Booking and Use of Facilities of Community Halls and Community Centres

* In order of completion date





Environmental Protection Department ("EPD") and Transport Department ("TD")

Case No. OMB/DI/376

Government's Implementation of Strengthened Control of Exhaust Emissions from Petrol and LPG Vehicles

(Investigation declared on 14 April 2015 and completed on 26 January 2016; full report [Chinese version only] available at www.ombudsman.hk)

Background

The Government has implemented a new emission control measure ("the New Measure") from 1 September 2014 to include nitrogen oxides ("NOx") in the regulatory regime in a bid to improve roadside air quality. Under the New Measure, EPD has set up remote sensing equipment to monitor the levels of NOx and other exhaust gases at various locations throughout the territory. Where the equipment detects excessive exhaust emissions from passing vehicles, EPD will issue an Emission Testing Notice ("ETN") to the vehicle owners concerned, requiring them to send their vehicles within 12 working days for an emission test conducted with a chassis dynamometer (commonly called a "treadmill") at one of EPD's Designated Vehicle Emission Testing Centres ("DVETCs"). Failure to pass the test may lead to cancellation of the vehicle licences in question by TD.

2. The New Measure was introduced with good intentions. Nevertheless, this Office received public complaints shortly after its implementation, in which the complainants alleged that while their vehicles had just passed TD's annual examination, they were then notified by EPD to send their vehicles for the treadmill test. Our investigation into those complaint cases revealed that TD has not included NOx emissions, targeted under the New Measure, in its exhaust emission standards adopted in the idle emission test conducted during the annual vehicle examination. Moreover, the 22 Designated Car Testing Centres ("DCTCs") currently carrying out the annual examination for TD are not equipped with treadmills for testing NOx emissions. In other words, vehicles having passed TD's annual examination do not necessarily meet the exhaust emission standards of the treadmill test. As there are now only four DVETCs authorised by EPD to conduct the treadmill test, it is questionable whether they can cope with the demand for vehicle testing and maintenance generated by the New Measure.

3. Meanwhile, EPD and TD have yet to draw up a timetable for upgrading the facilities and functions of most, if not all, DCTCs to enable them to conduct the treadmill test. The Ombudsman, therefore, was concerned about whether any inadequate planning and lack of coordination between the two departments in the implementation of the New Measure would cause any inconvenience to the public, and whether the smooth implementation of the New Measure would be compromised because they have failed to fully consider the capacity of existing ancillary facilities (such as the number of repair centres and DCTCs, and their technical levels).

4. In this connection, The Ombudsman initiated the direct investigation.

Our Findings

5. Our investigation has revealed that in the implementation of the New Measure, there are eight inadequacies on the part of EPD and TD in the following four areas.

A. Inadequate Planning

Failure to Provide Adequate Support for Vehicle Maintenance Trade before Implementation of New Measure

6. As early as 2002, the expert group (which included representatives from TD) formed by EPD completed deliberating the consultant's research report, and supported the consultant's proposal of using remote sensing equipment and treadmills for inspection of vehicles with excessive exhaust emissions. However, it was not until November 2011 that EPD studied the specific arrangements. In the first month upon the New Measure coming into effect on 1 September 2014, the overall passing rate was just 50% for vehicles undergoing the emission test with treadmills.

7. Since NOx are colourless and odourless, it will be difficult to detect any excessive NOx emissions without specialised equipment (such as treadmills or other portable sensing equipment for NOx testing). We believe that one of the main reasons for the vehicle maintenance trade to consider itself not yet able to master emission-related repair skills was the lack of suitable equipment for detecting the NOx emissions of vehicles. Apparently, the Government has overlooked the actual support the trade needed under the New Measure.

Failure to Provide Necessary Training for Vehicle Maintenance Trade at Early Stage

8. EPD only started providing the relevant information to the maintenance trade in April 2013 through demonstrations, technical advice hotlines, seminars and short courses offered jointly with the Vocational Training Council ("VTC"). To date, only some 1,000 mechanics have attended those short courses. Given that there are more than 10,000 mechanics in the trade, the shortfall is obvious. Therefore, EPD should take a serious look at the technical issues involved in vehicle maintenance generated by the New Measure, step up its cooperation with VTC and other training organisations, and discuss with the Electrical and Mechanical Services Department ("E & MSD") on how to enhance the maintenance trade's ability to provide emission-related repairs through the Voluntary Registration Scheme for Vehicle Mechanics and the Voluntary Registration Scheme for Vehicle Maintenance Workshops.

Failure to Explore the Possibility of Including Emission-related Repairs among Categories of Registered Vehicle Mechanics to Help Maintenance Trade and Vehicle Owners to Find Suitable Mechanics

9. The Vehicle Maintenance Registration Unit under E & MSD is responsible for the promotion, general management and operation of the Voluntary Registration Scheme for Vehicle Mechanics under which those with the necessary qualifications and/or experience may apply to become registered vehicle mechanics so that their qualifications and skills can be recognised. While registered mechanics are divided into different categories based on the types of repairs they provide, there is no category for inspection and repairs of vehicle emission systems. E & MSD indicates that it has no role in the implementation of the New Measure and the departments concerned have not consulted it on the registration of vehicle mechanics or the question of maintenance skills.

10. We consider it necessary to include emission-related repairs in the service categories provided by registered mechanics to ensure that the vehicle maintenance trade has adequate skills in repairing vehicle systems. Not only would this help the trade to estimate the demand for mechanics with related skills, it would be easier for vehicle owners to find the right people to repair their vehicles. Vehicle owners will not know what to do if they cannot get timely service from mechanics with related skills, thus compromising the effectiveness of the New Measure.

B. Lack of Publicity and Unclear Information

Publicity for New Measure Failing to Address Concerns of Interested Parties (Especially Vehicle Owners and Maintenance Trade)

11. Nowhere in the print advertisements including posters and leaflets or the TV commercial has EPD conveyed the most important message to the recipients: "it is possible that vehicles which have passed the annual vehicle examination may still be found emitting excessive exhaust by remote sensing equipment and fail in the treadmill test". Rather, the advertisements merely tell the public about "strengthened control of exhaust emissions", without giving any details as to how it is to be done or how it differs from the annual vehicle examination.

12. We considered that the publicity information on the New Measure is not clear and precise and may easily cause misunderstanding. In fact, this may explain why some members from the vehicle maintenance trade have commented that they mistook the New Measure to be something similar to the idle emission test in the annual examination. Obviously, the Government has failed to provide information that interested parties, especially vehicle owners and the trade, would find useful.

No Relevant Information Available on TD's Website

13. TD is responsible for issuing and cancelling vehicle licences, which means it can determine whether a vehicle could still be on the road. Therefore, it plays a major role in the implementation of the New Measure. TD is also the Government department that vehicle owners are most frequently in touch with. Taking a one-government approach, TD and EPD should work together in promoting the New Measure so that vehicle owners can learn sooner and more easily about the arrangements for the New Measure and their obligations (such as having their vehicles maintained properly). The most important thing is to remind vehicle owners that "passing the annual vehicle examination does not mean a vehicle can also pass EPD's emission test by remote sensing equipment and the treadmill test". However, we cannot find even a simple leaflet on TD's website, let alone information about implementation of the New Measure. This shows inadequacies on the part of TD.

C. Inadequate Coordination between the Departments

Ineffective Coordination between the Two Departments on Inclusion of Treadmill Test in Annual Examination

14. The annual vehicle examination that TD conducts on vehicles does not cover NOx emission test. Besides, the standards for carbon monoxide and hydrocarbons emission testing in the annual examination also differ from those for the treadmill test.

15. To resolve the difference in standards of exhaust emissions between the annual examination and the treadmill test, the most direct way would be to raise the standards of the former to the same level as the latter in exhaust emission tests such that the practice would be consistent with the New Measure. As a matter of fact the discussion papers on this subject submitted by EPD to the Panel on Environmental Affairs of the Legislative Council ("LegCo") in 2012 and 2014 also mentioned the aim to include NOx test in the annual examination.

16. Nevertheless, TD presents a different view on whether the treadmill test should be included in the annual vehicle examination. TD opines that "not roadworthy" and "exceeding the vehicle emission standards" are two different concepts. Therefore, in principle, NOx testing should not be included in the annual examination. For the convenience of vehicle owners, however, the arrangement should be having the annual examination and emission test conducted at the same time and the same venue where practicable. TD considers that the owners can make an appointment for the annual examination and emission test to be conducted at the same time and the same centre. In so doing, vehicles are still required to go through both the annual examination and the treadmill test; but in practice, the owners need simply to arrange for one examination, without going through duplicated procedures, thereby achieving the effect of including the treadmill test in the annual examination.

17. The above shows that TD and EPD take on different positions as regards the implementation of the New Measure. It is doubtful whether they have been coordinating effectively with each other.

18. If this latest view of TD is to put into practice, it would mean that the annual examination still would not include the treadmill test. Currently, the annual exhaust emission test is not required by law. Unless the relevant legislation is amended to require all vehicle owners to arrange for an annual emission test in addition to the annual examination, EPD has no authority to issue an ETN to require a vehicle owner to arrange for the treadmill test if the vehicle concerned is not found to have excessive emissions. The only thing that EPD can do is to send the owner a cordial reminder. It is difficult to assess whether the setting up of an emission test centre at the same venue can encourage the majority of vehicle owners to put their vehicles through an emission test while undergoing the annual examination. Furthermore, if most of the vehicle owners do take the treadmill test concurrently with the annual examination, the annual examination will take an extra 20 minutes to complete. This may require a significant increase in the capacity of the existing 22 DCTCs to cope with the demand. As the number of vehicles to be examined is increasing every year, EPD and TD should give careful consideration to the capacity of the DVETCs and DCTCs regardless of the future arrangements for the New Measure.

19. We consider that EPD should work proactively with TD to resolve their differences in implementing the New Measure and clarify as soon as possible the direction and specific arrangements for it. They should also review the long-term strategy and principle with the relevant policy bureaux in this regard to ensure the effectiveness of the New Measure.

D. Failing to Adequately Consider the Ancillary Facilities for Implementing New Measure

Failing to Resolve Early the Problem of Installing Treadmills at DCTCs

20. In April 2012, EPD allocated funds to TD for commissioning a consultant to study the feasibility of installing treadmills at TD's DCTCs or other locations. However, the issue had not been properly dealt with before implementation of the New Measure. As a matter of fact, in March 2014 (i.e. six months before the launch of the New Measure), some DCTCs already indicated to EPD that they would not have the space for installing treadmills. In August 2015 (i.e. one year after the launch of the New Measure), TD's consultant completed the report, concluding that among the 22 DCTCs, only five would be able to install treadmills. At present, there is no specific timetable for installing treadmills at any DCTC, and none of the DCTCs has the capacity to conduct the treadmill test.

21. As the proposal of conducting emission test with treadmills was made as early as 2002, we consider that the Government should have had enough time to study ways of allocating land to install treadmills and inviting more operators to participate as well as assessing the availability of space in existing DCTCs for installing treadmills. Nevertheless, the departments concerned have failed to work out a solution before the New Measure was implemented.

Under-utilisation of DVETCs

22. There is information that a treadmill may cost up to around $1.6 million to $2.4 million, with a service life of six years and the operating costs of a DVETC at around $230,000 to $240,000 per month, while the largest number of ETNs issued by EPD each month was 660. Assuming 20 working days in a month, an average of 33 vehicles would have undergone the emission test each working day, meaning each of the four DVETCs handling only eight cases per day on average. That was far below their maximum capacity of 32 test cases per day. Given the current operating costs of a DVETC and the number of vehicles tested, we believe that the costs could hardly be recovered. If such situation

continues, it is highly questionable whether anyone in the vehicle testing trade would be interested to invest further into the provision of emission test service.

23. We consider that before NOx testing becomes part of the mandatory annual examination, EPD should, in order to promote the importance of proper vehicle maintenance, devise incentive measures to encourage vehicle owners to take their vehicles to a DVETC for the NOx test and other emission tests. In this way, the vehicle owners would become aware of the problem of excessive emissions at an early stage. Besides, such measures can improve the sustainability of the existing DVETCs and would be of great help to the policy which aims at reducing emissions.

Recommendations

24. In the light of the above, The Ombudsman made the following improvement recommendations to the Government:

Coordination between EPD and TD

(1) EPD should review its discussion with TD on the interrelationship between NOx testing and the annual vehicle examination and ensure that both departments work for the same goal. They should also review with the relevant policy bureaux the long-term strategy and principle in implementing the New Measure such that a specific schedule for implementing such strategy and principle can be drawn up as soon as possible;

(2) besides requiring new DCTCs to reserve enough space for installing treadmills, EPD and TD should set out a timetable for existing DCTCs that can be retro-fitted with treadmills to proceed with the installation, and provide support to them where needed;

(3) TD should actively consider how to speed up its approval for new DCTCs which have space reserved for installing treadmills. It should also study with EPD ways to ensure that these new centres will have treadmills installed at an appropriate time for conducting emission tests;

(4) TD and EPD should closely follow up on the progress of the task force (comprising representatives from the two departments and DCTC operators) on its assessment of the impact on the time and space needed for the annual vehicle examination should the treadmill test be included as part of the annual examination;

To Enhance Training and Support for Vehicle Maintenance Trade

(5) EPD should strengthen its cooperation with the training organisations for the maintenance trade (such as VTC, universities and other professional bodies) to organise more courses and provide stronger technical support to help members in the maintenance trade to master the skills of emission-related repairs;

(6) EPD should discuss with E & MSD whether to add mechanics specialised in emission-related repairs as another category of registered vehicle mechanics in order to ensure that members in the trade acquire the relevant technical skills. This would also help vehicle owners to find mechanics with the required expertise to repair the exhaust system of their vehicles;

(7) EPD should provide more financial or technical support to the maintenance trade for carrying out emission tests, so that they can measure the emissions level of vehicles by installing treadmills or other portable devices that can detect NOx emissions. EPD should also help them obtain information on vehicle maintenance and repairs, such as the repair manuals of different vehicle models;

To Step up Publicity and Promotion

(8) before the annual examination can be upgraded to include NOx testing, EPD should step up publicity regarding the New Measure, especially the treadmill testing method. Vehicle owners should also be alerted to the fact that even if their vehicles have passed the annual examination, they may still fail in the treadmill test;

(9) TD should take action to promote the New Measure to the public (for example, it can provide relevant information on its website and at its Licensing Offices) to ensure that vehicle owners are aware of the operation of the New Measure and their own maintenance responsibility;

To Ensure Sustainability of DVETCs

(10) EPD should watch closely the operation of existing DVETCs, provide support where necessary and make advance planning to avoid the effectiveness of the New Measure being compromised should any such centres encounter difficulties in business operation; and

(11) EPD should consider formulating measures to provide incentives to vehicle owners (e.g. a vehicle testing fee subsidy) for them to take their vehicles for an emission test, thereby boosting the effectiveness of the New Measure.



Home Affairs Department ("HAD"), Lands Department ("Lands D"), Food and Environmental Hygiene Department ("FEHD"), Agriculture, Fisheries and Conservation Department ("AFCD") and Water Supplies Department ("WSD")

Case No. OMB/DI/248

Management of Permitted Burial Grounds

(Investigation declared on 14 January 2014 and completed on 13 November 2015; full report [Chinese version only] available at www.ombudsman.hk)

Background

Since 1983, the Government has been implementing its "hillside burial policy" ("the Policy") and designated about 520 Permitted Burial Grounds ("PBGs") on various pieces of Government land, totalling some 4,000 hectares, for burial of deceased indigenous villagers of the New Territories. The Policy aims to uphold the traditional rights and interests of indigenous villagers and to curb the problem of hillside burial of non-indigenous residents. An array of management problems associated with PBGs have, however, emerged over the years, such as unauthorised grave construction and suspected

illegal burials of non-indigenous residents in PBGs. The Ombudsman, therefore, initiated this direct investigation to examine the current management system and procedures, with a view to identifying any inadequacies.

Our Findings and Comments

Current Management System and Procedures

2. According to the existing Operational Guidelines, when a District Office ("DO") under HAD receives an application for Burial Certificate ("the Certificate") from the family of a deceased indigenous villager, it will verify the eligibility of the deceased before issuing a Certificate to his/her family member. The DO concerned will also ask the family member to mark on a map of the PBG produced by Lands D to roughly indicate the proposed location of the grave to be constructed.

3. The Certificate sets out the conditions that a Certificate holder must observe. Those conditions include:

- The remains of the deceased must be buried within the boundaries of the PBG and the serial number of the Certificate must be inscribed on the gravestone.

- The Certificate holder must follow the rules on land use and public hygiene set by Lands D and FEHD respectively in the Attachment to the Certificate. If the grave is located within a country park or a water catchment area, the Certificate holder must also comply with the rules laid down by AFCD and WSD.

4. DOs would refer cases of non-compliance with the above conditions to the relevant departments for follow-up in accordance with their jurisdictions and the relevant legislation. DOs have the power to revoke the Certificate in such cases, besides referring the cases to Lands D and FEHD for enforcement action, i.e. removal of the grave and the remains.

Unclear Responsibilities and Divided Authority

5. The aforesaid problem of divided authority and lack of one single department for overall management have made it very difficult for PBGs to be effectively managed.

6. While HAD is responsible for processing applications for the Certificate and has been vested with the statutory authority to grant permission for deceased indigenous villagers to be buried on hillsides, the Department does not have the statutory authority and the expertise to supervise the burial process and take enforcement action against suspected illegal activities. HAD needs the assistance of other departments which have such statutory authority and expertise in handling issues relating to PBGs, e.g. to confirm whether a burial site falls within the PBG boundaries, to conduct inspections on PBGs, to follow up on cases of illegal burials and to deal with problems of environmental hygiene and illegal tree felling. However, such other departments have failed to render HAD full support. As a result, various problems persist and remain difficult to resolve.

7. Furthermore, under the Policy, deceased indigenous villagers can be permanently buried in PBGs, and yet PBGs remain unallocated Government land. The Government has never officially allocated PBG sites to any single department for management, nor clearly specified by way of a contract (such as a lease or land licence) the relationship between the Government and Certificate holders and their respective rights and obligations. When management problems relating to those sites emerge, there are bound to be disputes as to which party as allocatee/grantee of the land should handle the problems.

8. Regarding the aforesaid systemic problems, HAD thinks that the management of PBGs can be improved by setting up inter-departmental management committees. However, we believe that a more effective approach is to have one single department or organisation responsible for the overall management of PBGs. Legally binding terms and conditions should

also be imposed on the Certificate holders. By doing so, the issue of management responsibility can be resolved once and for all.

Loose Conditions of the Certificate

9. The Government's regulation of PBGs is based mainly on the conditions of the Certificate issued by HAD, but such conditions are very loose. This is manifested in the following loopholes in the existing system of burial of indigenous villagers.

No Verification of Burial Locations

10. Under the Operational Guidelines, neither DOs nor the District Lands Offices ("DLOs") under Lands D will conduct site visits to check the burial locations of indigenous villagers. In the absence of boundary markers for PBGs, the actual burial locations may not be the same as those indicated in the applications and may even be outside the PBGs. Although Lands D and FEHD can take enforcement actions and remove the graves and human remains in question, such actions would often be seen as disrespect for the tradition of letting the deceased rest in peace and would meet with strong resistance from the surviving descendants, thus rendering all enforcement efforts futile.

11. HAD has repeatedly proposed that Lands D verify on site the burial locations of indigenous villagers since Lands D has the expertise. Yet, Lands D refused the proposal on grounds of inadequate manpower. We are of the view that since illegal burials outside PBGs do happen, Lands D and HAD should not shy away from their responsibilities. Resource constraints are not a good excuse for inaction.

No Restriction on Size of Burial Site

12. As there is no restriction on the size of burial site in the conditions of the Certificate, the areas of land occupied by burial sites of indigenous villagers range from a few dozen to several hundred square feet. Given the scarcity of land resources in Hong Kong, the public will find it unfair that the Government has set no restriction on the size of burial site for indigenous villager.

Futility of Some Conditions of the Certificate

13. The departments concerned have set out conditions in the Certificate that holders must comply with. Nevertheless, we discover that some departments have no procedures or mechanisms for enforcing those conditions. They do not even check whether the Certificate holders comply with the conditions of the Certificate, making those conditions practically useless. For instance, it is stipulated, *inter alia*, that applicants must not remove any trees without prior permission from the DLO concerned. However, in reality, grave construction at PBGs, located in rural areas as they are, often involves tree removal without prior permission, and yet the DLOs have turned a blind eye to this problem all these years.

14. Moreover, Lands D, HAD and FEHD do not conduct regular inspections on PBGs. They just passively rely on reports of irregularities from the public. The absence of a mechanism to check the holders' compliance with the conditions of the Certificate amounts to conniving at or even encouraging non-compliance.

15. In October 2013, HAD held an inter-departmental meeting and proposed that a pilot scheme be introduced to certain PBGs, including the setting up of some management committees and the implementation of a number of improvement measures to strengthen the regulation of the locations and size of burial sites. That would have been a positive move, but it was halted for lack of support from the other departments concerned.

Lax Enforcement against Illegal Burials

16. Burials of indigenous villagers outside PBGs and hillside burials of non-indigenous villagers (regardless of whether they are within PBGs) are all illegal burials subject to enforcement actions by Lands D and FEHD. HAD can revoke the Certificates if the burial sites of indigenous villagers are outside PBGs.

17. We notice that illegal burials are in fact not rare. However, HAD and Lands D would often suspend or even discontinue their enforcement actions when opposed by indigenous villagers or the villages concerned, and the departments concerned have never made any effort to assess the magnitude of the problem of burials outside PBGs.

18. While HAD is empowered to revoke the Certificate in case of non-compliance, the DOs have never exercised that power.

Ecological Impact of PBGs on Conservation Areas

19. The areas where PBGs overlap with the land of Conservation Areas or Sites of Special Scientific Interest ("SSSIs") add up to some 800 hectares. Burials are, however, often incompatible with the stated purposes of Conservation Areas or SSSIs. To build a new grave, indigenous villagers would usually remove the trees, shrubs and turf in the vicinity before cementing the burial site. Clearly, such activities can damage the ecological habitat which has conservation value, contrary to the Government's original intent of designating the Conservation Areas. Given that the authorities do not verify the locations of burial sites, nor is there any restriction on the size of burial sites, extensive construction works may be carried out within the conservation zones, thereby causing damage to the natural ecological environment.

Lack of Long-term Planning for PBGs

20. The land available in rural areas for hillside burials is limited. Since indigenous villagers are entitled to permanent burial within PBGs, the available space within the PBGs will, in the long run, gradually shrink and be less able to cope with villagers' demand. Yet, HAD has not estimated the usable life span of the PBGs.

21. We consider that the Government should have long-term planning. With limited land resources, the Government should give serious thoughts to the matter and contemplate how to uphold the rights and interests of indigenous villagers in hillside burials on the one hand and balance the interests of the general public on the other.

Recommendations

22. The Ombudsman has made six recommendations:

HAD, Lands D, FEHD, AFCD and WSD

(1) to launch the pilot scheme proposed by HAD as soon as possible, with the departments concerned actively participating with their respective expertise, to ascertain whether the improvement measures (such as including boundary markers for the PBGs and setting restriction on the size of burial sites) are feasible and effective, with a view to gradually extending them to cover more PBGs;

(2) to review and strengthen the conditions of the Certificate as soon as possible, and establish a mechanism to monitor the compliance of those conditions and to take enforcement actions where necessary;

HAD and Lands D

(3) to explore ways for their mutual support and set up an effective mechanism to ensure that all the graves are located within the PBGs;

(4) to assess the magnitude of the problem of illegal burials and formulate effective enforcement strategies, including regular patrols of the PBGs and black spots of illegal burials, and step up their efforts in combating illegal burials;

(5) to conduct a comprehensive review of the Policy jointly with the relevant departments and policy bureaux, aiming at incrementally systematising and enhancing the management of PBGs (including exploring the possibility of designating a single department/organisation to take up the overall management of PBGs); and to scrutinise the land use and the impact on natural environment in relation to the Policy, with a view to formulating a sustainable long-term strategy (including a study on the feasibility of adopting the public cemetery approach for more systematic management of PBGs); and

Lands D

(6) to avoid designating or extending PBGs within conservation zones, so as to avoid causing further damage to the ecological habitat.



Housing Department ("HD")

Case No. OMB/DI/374

Method of Calculation of Waiting Time for Public Rental Housing and Release of Information

(Investigation declared on 24 July 2015 and completed on 7 December 2015; full report [Chinese version only] available at www.ombudsman.hk)

Background

Over the years, the Government's target has been to maintain the waiting time at around three years for general applicants[1] for public rental housing ("PRH"). This target of "allocating a housing unit within three years" has gradually formed the basis of public expectation. However, the Office of The Ombudsman has received from time to time complaints about not getting an allocation after waiting for more than three years. Moreover, in handling individual complaint cases, we noticed that the waiting time for some applicants has far exceeded three years. As such, The Ombudsman decided to initiate a direct investigation into the method of calculation of waiting time for PRH and the release of information by HD, the executive arm of the Hong Kong Housing Authority ("HKHA").

[1] General applicants include: (1) family applicants; and (2) elderly one-person applicants.

Targets for Waiting Time for General Applicants

2. In line with the Government policy objectives and to monitor the effectiveness of PRH allocation, HKHA has set the targets for waiting time for general applicants at three years and for those elderly one-person applicants among them at two years.

Definition and Derivation of AWT and Release of Information

3. According to HKHA/HD, waiting time refers to the time taken from the date on which an application for PRH is registered to the first flat offer made to the applicant. The average waiting time ("AWT") for general applicants refers to the average of the waiting time for family applicants and those elderly one-person applicants housed to PRH in the past 12 months. Within five weeks after each quarter, HD releases the latest AWT for general applicants and for those elderly one-person applicants among them.

4. General applicants actually cover the following five types of applications:

(1) Ordinary Families;

(2) Single Elderly Persons Priority Scheme (i.e. applications by elderly one-person applicants);

(3) Elderly Persons Priority Scheme;

(4) Harmonious Families Priority Scheme; and

(5) Express Flat Allocation Scheme.

5. For Type (1), Ordinary Families, there is no "priority" or "express" arrangement in the allocation of PRH. Yet, the AWT for general applicants released by HD covers all the five types.

6. Moreover, HD provides an update on the Allocation Status on the 15th day of each month for public information. Since 2011, HD has also conducted a yearly special analysis of the housing situation of general applicants for PRH. The Analysis Report includes information such as the distribution of waiting time calculated on the basis of family size and selected district, and the supply of PRH units. The Analysis Report would be submitted to the Subsidised Housing Committee ("SHC") of HKHA for deliberation.

Our Findings

HD Unwilling to Break Down and Provide AWT for Different Types of Applicants

7. HD includes all the five types of applications in calculating the AWT for general applicants. However, each type of applications is accorded a different priority in housing allocation. During our investigation, we suggested that HD provide the AWT for each type of applicants. If there is any difficulty in doing so, HD should at least provide the AWT for family applicants after excluding the elderly one-person applicants. We also requested HD to provide AWT data for each type of general applicants so that the AWT for Ordinary Families can be derived after excluding the elderly one-person applicants and those under the "Priority" and "Express" schemes. However, HD could not provide such data.

8. HD explained that the AWT for general applicants should be published on an overall basis (i.e. covering Types (1) to (5) in para. 4 above) for assessing whether it can meet the target of "allocating a housing unit within three years".

9. For PRH applicants registered on the Waiting List but are yet to receive an offer, HD considered it difficult to estimate how long they would still have to wait. The latest Allocation Status updated on the 15th day of each month would, therefore, probably be more useful to the applicants.

10. We consider HD's generalised calculation of the AWT of general applicants not being able to reflect the real situation. In particular, such information can easily mislead applicants from Ordinary Families, resulting in complaints and criticisms of creating a false image of "allocating a housing unit within three years".

11. In our view, if HD merely provides a generalised, overall AWT figure, applicants can only assess their own cases using that figure. Where there is a discrepancy between their expectation and the real situation, they will naturally feel aggrieved. Without realising the real meaning of the so-called AWT, PRH applicants will inevitably feel indignant when there is no sign of allocation after waiting for more than three years. Their complaints are indeed understandable.

12. We have reservations about HD's reluctance to break down and provide the AWT for different types of general applicants. As a matter of fact, all applicants are anxious to know, or at least have some idea about, when they can be allocated a PRH unit. The AWT for different types of applicants can better reflect the real situation, providing useful reference for PRH applicants, especially those applicants from Ordinary Families who do not benefit from any "Priority" or "Express" schemes, to plan for their own housing arrangements.

HD Unwilling to Release More Information on PRH Waiting Time

13. HD is in possession of some crucial data on various factors affecting the waiting time, such as applicants' district choice, their family size and the forecast supply of PRH units (see para. 6). While such information is not kept confidential, the general public or PRH applicants may not know where to obtain the information, nor will they all read the Analysis Report in detail. Therefore, in the course of our investigation, we suggested that HD make an extra effort to collate the key information and release it through publicity channels after completing the Analysis Report every year.

14. HD contended that the Analysis Report was only intended for discussion at the SHC of HKHA. As the analysis was conducted only once a year, it could not reflect the latest situation. As such, the information in the Analysis Report may not help PRH applicants to make decisions most favourable to them. Applicants could be misled and try to change their application details such as family size and selected district. In case such changes eventually prolonged their waiting time, the applicants would end up in a more disadvantageous position.

15. This Office do not accept HD's argument that such information may not be useful to PRH applicants. Even if the data merely reflect the trend of the year past and are not indicative of the future, it does not mean that they are of no reference value. As a matter of fact, many plans are made with past trends as important reference. Besides, an open and accountable government would not cite "the information may not be useful to the public" as a reason for refusing to release information. We do not see how the information would mislead PRH applicants either. If HD is worried about any possible misunderstanding that may arise, it can add explanatory notes to such information when it is released. In short, HD's refusal to make an extra effort is in conflict with the Government's spirit and endeavours in maintaining openness and transparency and that is undesirable.

HD Unwilling to Publish Information on Second and Third Flat Offers

16. HKHA has set no target regarding the waiting time for valid second and third flat offers. The waiting time may be prolonged if the applicants refuse a flat offer without "acceptable reasons". In deciding whether or not to accept the first offer, if the applicants are fully aware that no target is set regarding the waiting time for the second and third flat offers, and that they may need to wait for a certain period of time before getting

the next offer, they would then think more seriously before they refuse the first offer. Therefore, we consider that HD should state in its publicity materials on PRH application that there are no waiting time targets for the second and third flat offers. HD should also provide the AWT in the past year for the second and third flat offers as far as possible for applicants' reference.

17. HD noted that whether or not to accept an offer is strictly a personal decision of the applicant and beyond HD's control. On the other hand, when an applicant who has rejected a previous flat offer will get another offer depends on a number of factors. Their time of getting another offer may vary greatly. As such, HD considers the AWT data concerning the second or third flat offers to be of little reference value to PRH applicants.

18. This Office, however, is of the opinion that release of information on the second and third flat offers should be useful in helping applicants to make a serious and prudent decision on receiving their first offer.

Our Final Comments and Recommendations

19. In sum, HD lacked transparency in its release of information concerning PRH waiting time. The information mentioned above can help PRH applicants to understand better the operation of the Waiting List and can, therefore, help reduce complaints and grievances resulting from prolonged waiting time. HD should, in the spirit of openness and accountability, release such AWT-related information as far as possible.

20. In the light of the above, The Ombudsman recommends that HD re-examine its justifications for non-disclosure of further information with regard to the following areas and submit the results to HKHA for further deliberation:

(1) to calculate separately and provide an AWT for each of the different types of applicants (see para. 4). If this cannot be done in one move, HD should at least calculate and provide the AWT for other family applicants after excluding those elderly one-person applicants. The information thus derived would then be more practical and realistic. Relevant stakeholders (e.g. PRH applicants) should be consulted where warranted;

(2) to collate the information mentioned in para. 6 above concerning the distribution of waiting time calculated on the basis of family size and selected district, and the supply of PRH units as contained in the Analysis Report. The information should be uploaded to the "Flat Application" webpage for public reference; and

(3) to explain in the Application Guide for PRH that there are no waiting time targets for the second and third flat offers. AWT data for the second and third offers of the past year should also be provided flat as far as possible.



Lands Department ("Lands D") and Fire Services Department ("FSD")

Case No. OMB/DI/342

Regulation of Fire Safety Measures for New Territories Exempted Houses

(Investigation declared on 5 May 2014 and completed on 13 August 2015; full report [Chinese version only] available at www.ombudsman.hk)

Background

The Building (Planning) Regulations under the Buildings Ordinance stipulate that all buildings shall be provided with an emergency vehicular access ("EVA") to facilitate rescue services. As New Territories Exempted Houses ("NTEHs") are not subject to the Regulations, the Government can only use administrative means to regulate fire safety measures for NTEHs.

2. The efficacy of fire safety measures has a direct bearing on the lives and safety of NTEH residents. The Ombudsman, therefore, conducted this direct investigation to look into the current system and procedures for regulating fire safety measures for NTEHs, with a view to identifying any inadequacies.

Our Findings

3. Since 1 July 2006, the Government has been using "A Guide to Fire Safety Requirements for New Territories Exempted Houses" ("the Guide") as an administrative means to regulate fire safety measures for NTEHs. The Guide stipulates that:

(1) If there is a "cluster" of ten houses or more (including the house proposed to be built) within a circle with a radius of 30 metres measuring from the site of the proposed house, an EVA should be provided by the NTEH applicant.

(2) If provision of an EVA is impracticable due to problems such as geographical constraints or land ownership issues, an NTEH applicant can apply to Lands D to adopt alternative safety measures such as automatic sprinkler system, fire detection system and hose reel system in his house. If the applicant adopts any of the safety measures other than automatic sprinkler system, he or his representative will have to attend a fire safety training course arranged by FSD.

4. Our investigation has revealed that implementation of the fire safety requirements in the Guide for NTEHs failed to meet the original objective of providing adequate fire safety protection for NTEH residents. Furthermore, Lands D's and FSD's monitoring of the fire safety measures for NTEHs is less than satisfactory.

Requirement for Provision of EVA More or Less Non-existent

5. According to the stipulations in the Guide, provision of an EVA is certainly the most preferred option among all the fire safety measures. The alternative safety measures, while allowed by the Government, are in fact second-rate.

6. Nevertheless, since the introduction of the Guide, in over 90% of the cases in which Lands D considered the provision of an EVA necessary, no EVA was eventually provided, meaning that the NTEHs are not served by this more effective means for fire safety protection. What is more worrying is that even when an NTEH applicant succeeds in providing an EVA, there is no assurance that the EVA would not be blocked or rescinded later on, and there would be little that Lands D and FSD could do in such cases.

7. While NTEH owners are required by the Government to provide an EVA under the Guide, that requirement exists more in form than in substance.

Existing NTEHs Not Covered by Alternative Safety Measures

8. Lands D pointed out that when the number of NTEHs increases to a certain level, there would be a "cumulative effect" (including greater difficulty for fire engines and ambulances to access a house in distress), which means that the provision of an EVA is essential. In other words, an EVA is for the benefit of all the NTEHs within a "cluster", not just the house newly built.

9. By the same logic, if provision of EVA is impracticable, it is advisable for all the houses within the "cluster", including those existing ones, to adopt the alternative safety measures mentioned in the Guide. Having alternative safety measures in the newly built NTEH only is not going to help any of the existing houses in the "cluster".

Other Findings

10. Other findings in this direct investigation include:

(1) Neither Lands D nor FSD has set up a database for the EVAs of NTEHs. This would affect the efficiency of FSD's enforcement action.

(2) FSD has failed to conduct regular inspections of the EVAs of NTEHs.

(3) It is too lax of Lands D to allow the NTEH applicant to be represented by just any fellow resident of his village in attending the necessary fire safety training course.

Recommendations

11. The Ombudsman has made the following recommendations to Lands D and FSD:

Lands D and FSD

(1) to comprehensively review, jointly with the policy bureaux and departments concerned, the Guide to evaluate whether it is providing adequate protection to NTEH residents against fire hazards, and to explore feasible improvement measures;

Lands D

(2) to set up a dedicated database for the EVAs of NTEHs, and make it open to the public for inspection;

(3) to tighten up the procedures for approving attendance of fire safety training courses by proxy, stipulating that the NTEH applicant can only appoint as representative a resident who is going to live in the same house unless the applicant has genuine difficulties;

FSD

(4) to formulate a system of regular inspections of villages and EVAs, so as to ensure quick and safe access by firefighting and rescue services in case of emergency; and

(5) to step up publicity and education on fire safety among NTEH residents, clearly informing them of the associated fire risks and advising them to adopt fire safety measures in their own houses.



Rating and Valuation Department ("RVD")

Case No. OMB/DI/367

Regulation of Display of Building Numbers

(Investigation declared on 7 August 2014 and completed on 22 May 2015; full report [Chinese version only] available at www.ombudsman.hk)

Background

RVD is responsible for allocation of building numbers. Where an allocated building number is not displayed, RVD can serve a Display Order under the Buildings Ordinance on the owner of the building. It is an offence for any person to fail to comply with a Display Order.

2. However, it is not uncommon for buildings in Hong Kong not to display their building numbers. That not only causes inconvenience to citizens and tourists, but also affects the discharge of public duties such as police operations and ambulance, fire and postal services. Although RVD does remind the owners or occupants of ground-level shops and the owners' corporations of buildings to display their building numbers, such efforts have been largely ineffective. Moreover, RVD has never prosecuted those who fail to display their building numbers. It is doubtful whether RVD has diligently performed its duties.

3. In view of the above, we conducted this direct investigation to identify inadequacies in RVD's regulation of the display of building numbers.

Our Findings

Inadequate Checking on Non-compliance

4. Our findings show that RVD officers might, when performing outdoor duties, spot irregularities in the display of building numbers in the vicinity. However, the Department has not made it their duty to monitor the proper display of building numbers. We think that RVD should establish an inspection regime requiring its officers to discharge the duty, as well as to record the inspection results systematically.

5. Since 2013, RVD has conducted district-based Building Numbering Campaigns, involving inspections of buildings/shops and issuance of warning/advisory letters to residents and shop operators. However, only two have taken place so far, in Wan Chai and the Central and Western District, and not covering those problematic districts made up mostly of old or renovated tenement buildings (e.g. Sham Shui Po).

Lax Enforcement Procedures

6. RVD does not have guidelines for staff on the procedures for taking actions against failure to display building numbers, which should set out the number of prior warnings to be issued and the timeframes for conducting follow-up inspections, issuing a Display Order and instituting prosecution. RVD has no rules governing such significant steps which have a bearing on the effectiveness of its enforcement action. The system is very lax.

Reliance on Warnings and Too Much Tolerance

7. RVD's enforcement cases show that the statutory Display Order is a very effective enforcement tool. Any building owner in receipt of a Display Order would promptly take rectification measures, sparing RVD from the need to take the ultimate step of prosecution. However, RVD seldom issues Display Orders. It just keeps on issuing warning/advisory letters, which are more often than not ignored by building owners.

Need for More Encouragement to Old Buildings

8. Understandably, the problem of failure to display building numbers is more serious with existing buildings (especially those in the older districts) and buildings which have undergone renovation works or repairs to their external walls. We consider that RVD could enlist the help of the Home Affairs Department ("HAD") to remind the owners' corporations, owners' committees or management agents of buildings of their statutory duty to display building numbers. HAD should offer advice/assistance to owners of buildings that do not have an owners' corporation or management agent.

9. The Urban Renewal Authority provides doorplates with correct building numbers free of charge to those buildings participating in renovation projects under its Operation Building Bright. We hope that RVD would consider extending this free service to more buildings.

Need for More Publicity and Public Education

10. Most members of the public do not know much about building owners' statutory duty to display correct building numbers. They may not realise that RVD's requirements for display of building numbers are in fact quite simple. RVD should widely disseminate such messages to the public.

Recommendations

11. The Ombudsman recommends that RVD:

(1) require its officers to monitor the display of building numbers when performing outdoor duties and to systematically record and analyse their inspection findings;

(2) conduct more district-based Building Numbering Campaigns and in more districts;

(3) devise detailed guidelines on the procedures for enforcement actions on cases of failure to display building numbers;

(4) review its enforcement strategy and issue Display Orders as soon as possible to enhance its effectiveness of enforcement;

(5) enlist the help of HAD to step up publicity and public education for owners of old tenement buildings, and request HAD to act as an intermediary where necessary;

(6) consider providing more old buildings free of charge with doorplates showing correct building numbers; and

(7) consider making Announcements in the Public Interests on radio and television to educate building owners on their statutory duty to display building numbers and on how they can discharge that duty.



Water Supplies Department ("WSD")

Case No. OMB/DI/364

Mechanism for Handling Leaks of Private Water Pipes

(Investigation declared on 18 December 2014 and completed on 18 August 2015; full report [Chinese version only] available at www.ombudsman.hk)

Background

Water is a very precious resource in Hong Kong. As such, it is an important work target of the Government department responsible for water supply (i.e. WSD) to ensure that there is no leakage in all water supply facilities (public water supply facilities and private water pipes inclusive), and that proper repair works are carried out as soon as there is a leak. Nevertheless, the Office of The Ombudsman has from time to time received public complaints against WSD for delays in following up incidents of leaking private water pipes, resulting in wastage of fresh water for prolonged periods and residents nearby being affected by the nuisance of water leakage. Our preliminary inquiry revealed that repair works in about half of the cases of leaking private water pipes took more than 60 days to complete. In an extreme case, the repair works took more than two years. Meanwhile, the leakage continued and it was virtually impossible to assess the huge amount of fresh water wasted. In this light, The Ombudsman decided to initiate a direct investigation into the issue.

Our Findings

2. Our investigation found the following seven major deficiencies of WSD in handling leaks of private water pipes:

Over - tolerance in Case Handling, Tending towards Inaction

3. WSD's internal instructions stipulate that after a site inspection by WSD staff upon receipt of a report on leaking water pipe, a Waterworks Inspector or an engineer will, depending on the circumstances, determine a period for repairs and issue a Repair Notice. Normally, a period of 14 days would be allowed unless the leakage is serious and repairs must be completed within seven days. Non-compliance will lead to issuance of a Disconnection Notice by WSD, followed by a disconnection of water supply in seven days except in special circumstances.

4. However, the cases we had examined revealed that WSD would not arrange disconnection of water supply even when the repair works remained outstanding after expiry of the period prescribed in the Repair Notice. Instead, reminders were issued one after another to remind the consumers of their responsibility to carry out the repairs. Meanwhile, the leakage continued. WSD's attitude amounted to procrastination and a waste of time and manpower. Such over-tolerance and connivance only gave the public the impression of inaction.

Staff Failing to Follow up Cases Properly According to Established Procedures

5. Upon receipt of a report on leaking water pipe, WSD will arrange site inspection by its staff. A Waterworks Inspector or an engineer would then issue a Repair Notice prescribing a period for repairs based on actual circumstances. According to WSD's internal instructions, when the specified period expires or when repair work is completed, the staff concerned should conduct a site inspection again at the premises in question within five working days in all circumstances. If the registered consumer or agent is found to have failed to comply with the requirements of the Repair Notice, a Disconnection

Notice would be issued within two working days after the second inspection. However, the cases cited in our investigation report showed that WSD staff had not followed these instructions strictly. When consumers were found to have failed to repair the leaking pipes, WSD staff just conducted inspections time and again without escalating the actions, let alone disconnecting the water supply.

6. Furthermore, it is stated in the instructions that in cases where a communal service involves fresh water supply to multiple domestic units, and where no agreement can be reached after mediation by the local District Office ("DO") and the parties concerned eventually fail to repair the leaking pipes, water supply to the concerned premises may be disconnected with the approval of the Director of Water Supplies ("DWS"). However, WSD staff just kept copying Repair Notices to the DOs without specifying what substantive actions they expected from the DOs. Nor did the staff seek DWS's approval to arrange for disconnection of water supply afterwards. This showed that WSD's frontline staff did not fully understand the requirements in the instructions, and senior management also failed to monitor staff efficiency and the case progress effectively.

Instructions Unclear and Incomprehensive

7. The instructions that WSD had been using before May 2015 did not define clearly the circumstances under which a leakage would be classified as serious. We considered that in the absence of clear guidelines, deviations in judgement by different officers was no surprise, as the frontline officers could only rely on their own experience in assessing the magnitude of a leakage. An even bigger problem was that the assessment results of the individual frontline officer would affect the follow-up actions to be taken. Incorrect assessment might result in delay in taking more decisive actions, resulting in more fresh water being lost.

8. WSD staff's failure to act in accordance with departmental instructions to take decisive action (such as disconnecting water supply) after issuing the Repair Notice was attributable to the absence of monitoring procedures in WSD's old instructions. There was no mention of a mechanism for bringing up cases regularly for examination. Nor were the staff instructed to set a target timeframe for case resolution or bring more complicated cases to their supervisors for reviewing progress such that contingency measures (such as joint-departmental actions to resolve a case) could be taken where warranted. Even though the new guidelines stipulate that supervisors should review the case progress, specific measures for speedy resolution are not set out. We took the view that if WSD could establish in its new guidelines a mechanism for regular case review and monitoring of case progress with specified timeframes for case resolution, it would help its staff take more decisive and proper actions to resolve leakage cases promptly.

Insufficient Records of Private Water Pipe Plans Causing Delay in Repairs

9. WSD keeps the plans and drawings of all Government-built water mains networks, but the water pipe networks in private lands are not included in these plans and drawings. Nonetheless, when applying to WSD for water supply, registered consumers or agents are required to submit water pipe drawings for the Department to scrutinise whether the routing, specifications and associated fittings are up to standards. After granting approval, WSD will file away the drawings. So, WSD should in principle also have the drawings of the private water pipe networks. WSD stated that such drawings were only schematic and might not clearly show the precise locations of the water pipes in private lands. They would not be helpful to WSD in obtaining sufficient information about the water pipe networks.

10. We considered it highly unsatisfactory for WSD not to know where the water it supplies ultimately goes to. It may not be able to discover, let alone prosecute, any water theft by those who deliberately exploit the loophole. To increase the efficiency in handling cases of leaking private water pipes in

future, we urged WSD to actively consider collating the drawings and information provided by consumers/agents upon their applications for water supply, so that its frontline staff can refer to such records when investigating incidents of water leakage. Even though the drawings may not show accurately the most up-to-date locations of water pipes, they can at least provide some general information.

Duration of Leakage Not Regarded a Major Factor in Assessing the Magnitude of Cases

11. WSD indicated that although the amount of fresh water lost was one important factor in determining the magnitude of a leakage incident and whether disconnection of water supply was necessary, it was not the only factor for consideration. However, we considered that even the leak is minor and the amount of fresh water lost apparently small, it can run into a massive total if the problem persists over time. As shown in the cases cited in our investigation report, WSD had allowed some private water pipes to leak for more than a year. That was simply unacceptable. WSD, therefore, should take into account the duration of leakage as a major factor in assessing the magnitude of a case, so as to closely monitor the problem and take timely and decisive action to resolve it.

Failure to Address the Problem of Complex Responsibility for Repairing Private Water Pipes

12. Under the Waterworks Ordinance ("the Ordinance"), registered agents are responsible for maintaining the communal water pipes and associated water supply facilities in private estates, while individual consumers are responsible for maintaining the water pipes within their own premises. Problem will naturally arise if a leakage occurs at the communal section of an estate's water supply network and affects a number of domestic units, but no agent is available to arrange for repairs. Moreover, section 12(2) of the Ordinance stipulates that except in case of emergency, WSD officers are not empowered to enter any premises unless the Water Authority ("WA") or a person authorised by him has obtained consent from the occupant of such premises or a magistrate's warrant for entry. Therefore, repairs of leaking private water pipes can be a complicated task.

13. According to WSD's internal instructions, if ten households or more are involved in a leakage in private water pipes, or the building concerned is without an owners' corporation/owners' committee/property management office, WSD staff will write to the local DO to inform the latter of the case and ask the latter to liaise and mediate with the registered consumers residing in the affected building, so that repair works can be arranged as soon as possible. However, as seen in a number of cases, WSD staff just routinely copied to the local DO the letters addressed to the consumers/agents, without stating clearly what kind of assistance is expected from the DO, or how the two departments can coordinate their work. Worse still, WSD staff seldom took the initiative to follow up with the DO on the progress of matters. We considered it necessary for WSD to work out a strategy and a more proactive approach to address the complex issues regarding the responsibility for repairs and maintenance of private water pipes, such as formulating more specific arrangements on coordination with DOs under the Home Affairs Department ("HAD"), including engaging community leaders or representatives to facilitate the process, and stepping up public education on the maintenance responsibility of private water pipes.

14. WSD explained that it would try to urge the consumers to carry out the repairs themselves, rather than repairing on their behalf. We considered it proper in principle for WSD to adopt such an approach in general circumstances. However, in an emergency (such as when people's lives or property are at risk) or prolonged and serious leakage, or where complicated procedures are involved in the repair works, WSD should be obliged to step in and take prompt action to stop the leakage. Where necessary, it should carry out the repair works first and recover the cost from the responsible parties later, so as to stop the loss of fresh water.

15. During our investigation, we looked up some information from foreign countries and noted that the laws in some jurisdictions empower the local water supply companies to enter private premises for repairing water pipes on behalf of the consumers, with the cost covered by an annual fee prepaid by those consumers. WSD could take reference from such overseas practices and, where necessary, conduct a public consultation before considering if and how it should further explore the feasibility of such practices.

Unwilling to Recover Repair Cost, thereby Encouraging Evasion of Responsibility

16. Section 17(3) of the Ordinance stipulates that WA can alter or repair an inside service system or a communal service system at the request of a consumer or agent, and the cost thereof shall be payable by the person at whose request such alteration or repair is carried out. Moreover, under section 17(4), if a consumer or agent fails to carry out the repairs or other works as specified in the Repair Notice issued by WA under section 16, WA may carry out the repairs or other works and the cost thereof shall be payable by the consumer or agent. However, before WSD issued the new guidelines on 18 May 2015, it did not recover the cost in each and every case. WSD contended that it would assess the amount to be recovered to see if it would be sufficient to cover the administrative cost before deciding whether the repair cost should be recovered. Several cases we had studied showed that WSD made no attempt at all to recover the relevant cost from the consumers and it had not even issued a demand note. According to information provided by WSD, in the past five years, there were three cases where the Department carried out repairs of private water pipes on behalf of the consumers due to emergency. WSD, however, did not recover the relevant repair cost in the end. Under the new guidelines, WSD will issue a demand note to consumers/agents after conducting repair works to recover the cost involved. Nevertheless, whether WSD will indeed recover the cost proactively after the issuance of demand notes is yet to be observed.

17. We considered WSD's failure to proactively recover the repair cost as indirectly encouraging consumers/agents to evade their responsibility. The cases cited in our investigation report showed that it had cost WSD a lot of money and manpower in repairing the leaking pipes (including excavation, installation of valves, addition of pipes, etc). It was unreasonable for WSD not to recover any cost from the residents concerned subsequently.

18. Under section 10(a) of the Ordinance, WA may disconnect a fire service or inside service if any charge in respect of the fire service or inside service is not paid. WSD should be more proactive and decisive in recovering repair cost. In case the consumers concerned are not cooperative, WSD should exercise its power to disconnect the water supply as a deterrent.

Recommendations

19. The Ombudsman made the following ten recommendations to WSD:

Improve Procedures and Efficiency in Handling Complaints about Leaking Private Water Pipes

(1) to monitor and review promptly the implementation of the new internal guidelines issued in May 2015, and ensure that the magnitude of leakage is clearly defined and the mechanism for monitoring case progress is adequate;

(2) to ensure that the frontline staff strictly adhere to the internal instructions, which include site inspection within five working days upon expiry of a Repair Notice. Where repair of the pipe concerned is yet to be carried out, a Disconnection Notice of water supply should be issued and disconnection should be arranged in accordance with the internal instructions, unless there are reasonable justifications not to do so, with approval by senior officers;

(3) to strengthen staff training so that staff members are familiar with the instructions on handling of leakage cases, and acquire the methods and skills in handling complicated cases to avoid delay in action;

(4) to step up the monitoring of installation or alteration works of water mains networks in private premises to ensure that consumers/agents obtain prior approval from WSD and submit the up-to-date layout of the networks to WSD for records, as well as collating information on these layouts for frontline staff's reference;

(5) to consider following the practice of other countries, such as requiring prepayment of charges from consumers for repairing private water pipes in non-emergency situations to prevent persistent leakage and loss of fresh water. Public consultation may be conducted if necessary;

Assessment on Urgency of Water Mains Repairs

(6) to include the duration of leakage as a major consideration when assessing the magnitude of leakage cases;

(7) to establish the Water Intelligent Network as soon as practicable to collect data about water mains networks to facilitate more comprehensive and accurate estimates of the amount of water leakage from inside service networks throughout the territory. WSD should also actively install master meters or monitoring meters in private estates where no such meters are installed in order to estimate more effectively the loss of fresh water;

Urging Consumers to Assume Responsibility for Repairs

(8) to formulate a feasible coordination plan with HAD, such as seeking the cooperation of community leaders/representatives to work together with consumers and resolve the repair problems;

(9) to enhance public education on the responsibility of consumers and registered users for repairs of communal service, fire service and inside service under the prevailing Ordinance; and

(10) for cases where repairs have already been carried out for consumers, to consider adopting the same approach in recovering outstanding water charges from consumers, i.e. to issue demand notes and recover the relevant cost through legal action. For consumers who have defaulted payments for a long period of time, WSD should consider exercising its power under the Ordinance to disconnect the water supply as a deterrent.

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Buildings Department			
2014/4516A	Failing to take follow-up action against unauthorised building works	Unsubstantiated	1
2014/4657A	Delay in taking enforcement action against some illegal structures	Unsubstantiated	0
2014/5636	Delay in taking enforcement action against illegal structures	Substantiated	1
2015/0071A	Failing to take enforcement action against unauthorised building works in a village house	Unsubstantiated	0
2015/0240C	Failing to take proper action against the paint stains left on the pavement by a renovation worksite	Unsubstantiated	0
2015/1232	Delay in enforcing a repair order	Unsubstantiated	1
2015/1302	Failing to take follow-up action after serving a repairs notice	Unsubstantiated	0
2015/1490B	Delay and impropriety in handling a seepage complaint	Substantiated	2
2015/1586A	Failing to take enforcement action against a wall stall	Unsubstantiated	0
2015/1679A	(1) Failing to take enforcement action against unauthorised building works (unsubstantiated); and (2) Failing to issue a formal reply to the complainant (unsubstantiated)	Unsubstantiated	0
2015/1901A	Inappropriately disclosing the identity of the complainant to the restaurant under complaint	Inconclusive	0
2015/3042C	Mishandling a seepage complaint and shirking of responsibility	Unsubstantiated	2
2015/3061A	Ineffective enforcement action against the unauthorised building works of a village house	Unsubstantiated but other inadequacies found	1
2015/3355B	Failing to take enforcement action against unauthorised building works	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2015/3868A	Unreasonably stating that the metal gate of the complainant's neighbouring flat had not violated the regulations on means of escape and failing to reply to the complainant	Unsubstantiated	0
2015/3995A	Delay in taking enforcement actions against a large-scale signboard mounted on the external wall of a building, causing nuisance to the residents of a neighbouring building at night	Unsubstantiated	0
Companies Registry			
2015/0810	Disparity in handling registration of documents submitted by two boards of directors of a company	Unsubstantiated	0
2015/2426	(1) Failing to inform the complainant before the submission deadline that his signature had been missed out in the Annual Return form submitted (unsubstantiated); (2) Unreasonably levying late charges on the complainant (unsubstantiated); and (3) Unreasonably requiring the complainant to complete the Annual Return form in English (unsubstantiated)	Unsubstantiated	0
Consumer Council			
2015/2421	Unreasonably refusing to take up a complaint	Unsubstantiated	0
Correctional Services Department			
2015/2207(I)	(1) Deleting all the names of the medical staff on the complainant's medical records before providing those records to the complainant (unsubstantiated); and (2) Illegible handwriting in the complainant's medical records (unsubstantiated)	Unsubstantiated	0
2015/3646	(1) Improper categorisation of the level of security accorded to the complainant (unsubstantiated); and (2) Inappropriate use of force (inconclusive)	Unsubstantiated	2

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Customs and Excise Department			
2015/1222	Unreasonably accusing the complainant of failing to declare dutiable commodities and imposing a fine on him	Unsubstantiated	0
Department of Health			
2014/2060A	Extended reservation of a piece of Government land without a construction schedule, resulting in a serious waste of Government resources and public money	Unsubstantiated	0
2015/2550B	Failure to regulate the use of electric mobility device for the disabled	Unsubstantiated	0
2015/3698	Unreasonably refusing to provide School Dental Care Service to the complainant's son, who was receiving education at home	Substantiated	0
Drainage Services Department			
2014/4779D	Unreasonably accepting the design of drainage facilities on a piece of private land and failing to follow up properly the complainant's complaint	Unsubstantiated	0
2015/0112A	Failing to carry out drainage works in a village to resolve the flooding problem	Unsubstantiated	0
2015/0644A	Shirking responsibility in handling a complaint about suspected leakage of drainage pipe and damage of pavement	Unsubstantiated but other inadequacies found	0
Electrical and Mechanical Services Department			
2015/2167	Failing to properly monitor the maintenance workshops for liquefied petroleum gas vehicles	Unsubstantiated	3

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Environmental Protection Department			
2014/4544B	Failing to resolve the odour problem of a village drainage	Substantiated	1
2014/4779A	Failing to follow up and reply to a complaint about air and water pollution	Unsubstantiated	0
2014/5186B	Unreasonably rejecting the complainant's application under the Ex-gratia Payment Scheme for Phasing Out Pre-Euro IV Diesel Commercial Vehicles	Unsubstantiated	0
2014/5509A	Failing to follow up properly a complaint about leakage of foul water from a septic tank	Unsubstantiated	0
2015/0217	Delay in identifying the source of seepage of some pollutants	Unsubstantiated	1
2015/1901B	Inappropriately disclosing the identity of the complainant to the restaurant under complaint	Inconclusive	0
2015/3105A	Ineffective control of noise nuisance caused by music events held in a public place in Central and shirking of responsibilities	Unsubstantiated	0
Fire Services Department			
2015/0071B	Failing to take enforcement action against unauthorised building works in a village house	Unsubstantiated	0
2015/1800	Delay of an ambulance in arriving at the scene	Unsubstantiated	0
2015/1801	Unreasonably refusing to be escorted by the police while transferring the complainant's daughter from one hospital to another	Unsubstantiated	0
2015/3418	Wrong decision of not regarding a private road as an emergency vehicular access	Unsubstantiated	0
2015/3868B	Failing to take action against a metal gate which allegedly blocked the means of escape of the complainant's flat	Unsubstantiated	0
2015/4520A	Delay of fireboats in arriving at the scene	Unsubstantiated	0

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Food and Environmental Hygiene Department			
2014/2060G	Impropriety in its application for land allocation	Unsubstantiated but other inadequacies found	0
2014/3972A	Failing to properly follow up with other relevant departments on the complainant's application for outdoor seating accommodation for food premises	Partially substantiated	2
2014/4350A	Failing to properly handle the problems arisen from a recycle stall	Partially substantiated	1
2014/4438	Delay in taking follow-up action against water dripping from an air-conditioner	Unsubstantiated but other inadequacies found	1
2014/4775 2014/4897 2014/4907 2014/5543 2014/5546	Failing to take effective enforcement action, thereby condoning street traders' illegal hawking activities and tolerating the street obstruction they caused	Substantiated	1
2014/5276A	Shirking responsibility in tackling the problem of illegal hawking in a public housing estate	Unsubstantiated	0
2015/0240A	Failing to take proper action against the paint stains left on the pavement by a renovation worksite	Unsubstantiated	0
2015/0372A	Failing to properly follow up with other relevant departments on the complainant's application for outdoor seating accommodation for food premises	Partially substantiated	1
2015/0656	Delay in collecting food sample for testing, resulting in mishandling a relevant complaint	Substantiated	1
2015/0764	Mishandling a food complaint	Partially substantiated	0
2015/0773	Failing to properly follow through a complaint	Unsubstantiated	1
2015/1093	Failing to tackle the problem of feeding feral pigeons in a private building	Substantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2015/1475	(1) Wrong decision in issuing a provisional licence to a restaurant (unsubstantiated); (2) Failing to take enforcement action against the restaurant which operated as food factory without the relevant licence (unsubstantiated); and (3) Failing to take enforcement action against the restaurant which continued to operate after its provisional licence had expired (unsubstantiated)	Unsubstantiated	1
2015/1489	Ineffective control of hawkers in Scheduled Streets	Unsubstantiated	3
2015/1490A	Delay and impropriety in handling a seepage complaint	Substantiated	2
2015/1586B	Unreasonably advising the complainant to obtain a court order against a wall stall	Unsubstantiated	0
2015/1628	Failing to properly handle a food complaint about pesticide residues found on some Indian lettuce	Substantiated	2
2015/1715A	Ineffective control over the illegal hawking problem	Unsubstantiated	1
2015/1897	Failing to take enforcement action against some advertising light boxes which caused pavement obstruction	Unsubstantiated but other inadequacies found	1
2015/1901C	Inappropriately disclosing the identity of the complainant to the restaurant under complaint	Inconclusive	0
2015/1975	Mishandling a food complaint	Partially substantiated	1
2015/2064	Failing to take effective enforcement action against the street obstruction problem caused by illegal extension of business areas by shops	Partially substantiated	1
2015/2068	Failing to take effective enforcement action against the street obstruction problem caused by illegal extension of business areas by shops	Partially substantiated	1

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2015/2163B	Failing to take effective measures to tackle the problem of illegal parking of bicycles	Unsubstantiated	0
2015/2486	Failing to take effective enforcement action against the obstruction problem caused by a recycling shop	Partially substantiated	1
2015/2525	Failing to control unlawful use of stalls in a market	Substantiated	1
2015/2578	Issuing advisory letters about water drippings from air-conditioners without conducting site inspections	Partially substantiated	0
2015/2746	Failing to investigate thoroughly complaints about dripping air-conditioners	Unsubstantiated	0
2015/2992A	Failing to properly follow up a complaint about seepage of foul water from the wall of a village house	Unsubstantiated	1
2015/3042A	Mishandling a seepage complaint and shirking of responsibility	Unsubstantiated	2
2015/3077A	Ineffective enforcement action against street obstruction problem caused by furniture and objects	Unsubstantiated	1
2015/3105B	Ineffective control of noise nuisance caused by music events held in a public place in Central and shirking of responsibilities	Unsubstantiated	0
2015/3375A	Failing to take proper enforcement action against illegal fish-selling activities	Unsubstantiated	1
2015/3803A	Ineffective enforcement action against street obstruction problem caused by a recycling shop	Partially substantiated	1
2015/4180A	Failing to take enforcement action in respect of obstruction caused by shop-front platforms	Unsubstantiated	1
2015/4635	Impropriety in handling a food complaint	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Government Property Agency			
2015/0613	Delay in refunding the deposit to an ex-operator of a canteen at the Hong Kong Police College	Substantiated	8
2015/2416	Falsifying information about the complainant and releasing falsified information not consented to by the Police	Unsubstantiated but other inadequacies found	0
Government Secretariat – Chief Secretary for Administration's Office			
2015/2237(I)	Unreasonably refusing to provide the complainant with research reports published by the Central Policy Unit	Unsubstantiated	0
Government Secretariat – Constitutional and Mainland Affairs Bureau			
2015/2857(I)	Refusing to provide the complainant with the records of Government's meetings with political bodies and Legislative Council Members on political reform	Unsubstantiated but other inadequacies found	2
Government Secretariat – Development Bureau			
2014/2060D	Failure to handle properly the complainant's request and being biased towards the Planning Department	Unsubstantiated but other inadequacies found	1
2015/1960A	Shirking responsibility in handling a complaint about a decayed tree	Unsubstantiated	0
2015/3186(I)	Failing to provide the complainant with the list of 85 Cooperative Building Society sites estimated to have redevelopment potential	Substantiated	1
Government Secretariat – Education Bureau			
2014/3889	(1) Refusing the complainant's request for recording his telephone conversation with an officer (substantiated); and (2) Unreasonably requesting him to enquire about progress of his complaint only by writing or in person (unsubstantiated)	Partially substantiated	2

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/4939	(1) Wrongly allowing a kindergarten to refuse to help a student to use an inhaler in case of an asthma attack (unsubstantiated); and (2) Failing to inform the complainants of the investigation results of one of their complaints (unsubstantiated)	Unsubstantiated	1
2015/1849	Failing to properly monitor a primary school	Unsubstantiated	0
Government Secretariat – Food and Health Bureau			
2014/2060B	Failure to handle properly the complainant's request and being biased towards the Department of Health	Unsubstantiated but other inadequacies found	1
Government Secretariat – Home Affairs Bureau			
2015/1820A	(1) Failing to conduct an inquiry before replying to the complainant (unsubstantiated); and (2) Failing to monitor the selection of athletes (unsubstantiated)	Unsubstantiated	0
Government Secretariat – Transport and Housing Bureau			
2015/2325A	Failure to combat illegal carriage of passengers for hire or reward by unlicensed private cars booked through mobile phone apps	Unsubstantiated	0
2015/2438A	Failure to combat illegal carriage of passengers for hire or reward by vans	Unsubstantiated	0
2015/2981A	Failing to handle a complaint about improper change of building status	Unsubstantiated	0
Highways Department			
2015/0240B	Failing to take proper action against the paint stains left on the pavement by a renovation worksite	Unsubstantiated	0
2015/3805(I)	Refusing to provide the complainant with the tree inspection reports prepared by the Department's contractor	Unsubstantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Home Affairs Department			
2014/4350B	Failing to properly handle the problems arisen from a recycle stall	Unsubstantiated but other inadequacies found	0
2014/4544A	Failing to resolve the odour problem of a village drainage	Unsubstantiated	0
2015/0099B	Failing to monitor the construction works of a pet garden	Unsubstantiated but other inadequacies found	0
2015/0112B	Failing to carry out drainage works in a village to resolve the flooding problem	Unsubstantiated	1
2015/0644C	(1) Shirking responsibility in handling a complaint about suspected leakage of drainage pipe and damage of pavement (unsubstantiated); and (2) Poor staff attitude (inconclusive)	Unsubstantiated	0
2015/2163A	Failing to take effective measures to tackle the problem of illegal parking of bicycles	Unsubstantiated	2
2015/2327	(1) Delay in answering the complainant's enquiries about a local consultation conducted in 2006 (substantiated); (2) Delay in providing the complainant with the details of the consultation (substantiated); and (3) Providing false consultation results to another department (inconclusive)	Partially substantiated	1
2015/2753	(1) Unreasonably refusing to provide the complainant with the service of administration of declaration (unsubstantiated); (2) Allowing members of the public to make statutory declarations not in accordance with the statute (unsubstantiated); and (3) Misleading the public by using the terms "declaration" and "swear" interchangeably (unsubstantiated)	Unsubstantiated	1

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2015/3077B	Ineffective enforcement action against street obstruction problem caused by furniture and objects	Unsubstantiated	0
Hong Kong Examinations and Assessment Authority			
2015/1851(R)	Failing to properly handle the complainant's request for information	Partially substantiated	2
Hong Kong Housing Society			
2014/4538	Failing to properly handle the complainant's application for taking over the tenancy of a public rental housing unit	Unsubstantiated but other inadequacies found	1
2015/0847A	Unreasonably restricting non-HKID holders from applying for certain building maintenance subsidies	Unsubstantiated	0
Hospital Authority			
2014/5176A	(1) Failure to take into account the physical, medical and social aspects of the complainant's case in considering his application for disabled person's parking permit (unsubstantiated); (2) Failure to consider the complainant's application on compassionate grounds (unsubstantiated); and (3) Failure to inform the complainant of the outcome of its meeting with the Transport Department (substantiated)	Partially substantiated	1
2015/1802	Failing to seek consent from the complainant before removing the life support equipment for the complainant's daughter	Unsubstantiated	0
2015/2399	Delay in responding to a complaint	Substantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Housing Department			
2014/2264	Unreasonably take back the complainant's public rental housing flat when the complainant was studying abroad	Unsubstantiated but other inadequacies found	2
2014/3303	Misleading the complainant into believing that the alterations she made to her public rental housing unit were permitted and unreasonably refusing to provide her with the details of the charges on the reinstatement works	Unsubstantiated but other inadequacies found	5
2014/3798	(1) Failure to properly vet the applications for using certain public venues of a public housing estate (partially substantiated); (2) Unreasonably suspending all applications before the dispute was resolved (unsubstantiated); and (3) Providing false information when replying to the complainant (inconclusive)	Partially substantiated	4
2014/4562	(1) Allowing a District Council ("DC") member to apply for lease of a new ward office in a public housing estate before surrendering his original ward office (unsubstantiated); and (2) Allowing another DC member who shared the original ward office with the above DC member to take up the lease of office all by himself, instead of conducting an open allocation (partially substantiated)	Partially substantiated	3
2014/4890A	Shifting the responsibility to the complainant for maintenance of the water mains system underneath the slope and the bus terminus of a public housing estate	Unsubstantiated	0
2014/4946	Inappropriately accepting applications from some "community organisations" for using the public venues of a public housing estate	Unsubstantiated	0
2014/5008	Mishandling the complainant's enquiries and complaints	Unsubstantiated	2

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2014/5276B	Shirking responsibility in tackling the problem of illegal hawking in a public housing estate	Unsubstantiated	1
2015/0372B	Failing to take lease enforcement action against two food premises which occupied a back alley in a public housing estate	Unsubstantiated	0
2015/0427	Misleading the complainant into believing that the alterations he made to his public rental housing unit were permitted and delay in responding to his concern about reinstatement works	Unsubstantiated but other inadequacies found	4
2015/0786A	Failing to monitor the repair works carried out by its contractor and to reply to the complainant in writing	Substantiated	1
2015/0942(I)	Unreasonably refusing the complainant's request for records/operational guidelines/CCTV footage, etc. concerning the management of the public housing mall where the complainant had an accident	Substantiated	3
2015/1633	(1) Providing a form with unclear instructions (substantiated); and (2) Unreasonably refusing to meet the complainant to handle his complaint promptly (unsubstantiated)	Partially substantiated	1
2015/1715B	Ineffective control over illegal hawking problem	Unsubstantiated	1
2015/1810	Failing to tackle the problems of water dripping from and unauthorised installations of air-conditioners in a public housing estate	Unsubstantiated	2
2015/2091	Unreasonably requesting the complainant to vacate his public housing unit after he got a divorce	Unsubstantiated but other inadequacies found	2
2015/2216	Improper handling of the complainant's application for transfer to a bigger public housing unit	Unsubstantiated but other inadequacies found	2
2015/2981B	Unreasonably changing the building status of a Home Ownership Scheme estate	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2015/3042B	Mishandling a seepage complaint and shirking of responsibility	Unsubstantiated	1
2015/3229	Inconsistency in handling the complainant's two applications for transfer	Unsubstantiated	0
Independent Commission Against Corruption			
2015/0238(I)	Unreasonably refusing to provide the complainant with information related to the investigation of her corruption report	Unsubstantiated but other inadequacies found	1
Lands Department			
2014/2060E	Failure to manage properly a piece of Government land, resulting in a waste of Government resources and public money	Unsubstantiated	0
2014/3972B	Failing to properly check the responsibility for maintenance and repairs of a piece of land	Partially substantiated	0
2014/4350C	Failing to properly handle the problems arisen from a recycle stall	Unsubstantiated but other inadequacies found	1
2014/4544C	Failing to resolve the odour problem of a village drainage	Unsubstantiated	1
2014/4657B	Delay in taking enforcement action against some illegal structures	Unsubstantiated	1
2014/4779C	Failing to take enforcement action against the land-filling activities on a piece of private land	Unsubstantiated	0
2014/5509B	Failing to follow up properly a complaint about leakage of foul water from a septic tank	Substantiated	1
2015/0071C	Deciding that there was no breach of land lease by a village house flat without inspecting the interior renovation works in that flat	Unsubstantiated	0
2015/0324A	Failing to follow up properly the problems of illegal occupation or obstruction of metered parking spaces by two garages and vehicles crossing on the pavement in front of the garages	Substantiated	1

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2015/0644B	Shirking responsibility in handling a complaint about suspected leakage of drainage pipe and damage of pavement	Unsubstantiated	0
2015/1586C	Failing to inform the complainant of its follow-up actions against a wall stall	Unsubstantiated	0
2015/1679B	(1) Failing to take enforcement action against unauthorised building works (substantiated); and (2) Failing to issue a formal reply to the complainant (unsubstantiated)	Partially substantiated	1
2015/1960B	Shirking responsibility in handling a complaint about a decayed tree	Unsubstantiated	0
2015/1971(I)	Refusing to disclose the name of the Rural Committee chairman who agreed to a certain decision	Substantiated	2
2015/2163C	Failing to take effective measures to tackle the problem of illegal parking of bicycles	Unsubstantiated	0
2015/2413(I)	(1) Unreasonably refusing to provide information about a village house (unsubstantiated); (2) Failing to respond to the request for information within the target time stipulated in the Code on Access to Information (unsubstantiated); (3) Unreasonably questioning the legality of an authorisation letter issued by the complainant's father (unsubstantiated); (4) Giving inconsistent replies on whether the village house was in breach of any regulations (unsubstantiated); and (5) Refusing to provide information that the Department had sent to the complainant's father (unsubstantiated)	Unsubstantiated	0
2015/2992B	Failing to properly follow up a complaint about seepage of foul water from the wall of a village house	Unsubstantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2015/3061B	Ineffective enforcement action against the unauthorised building works of a village house which illegally occupied Government land	Unsubstantiated but other inadequacies found	1
2015/3077C	Ineffective enforcement action against street obstruction problem caused by furniture and objects	Unsubstantiated	0
2015/3144A	Failing to follow up the problem of illegal shelters erected near a beach by some barbecue site operators	Unsubstantiated	1
2015/3355A	Failing to take enforcement action against the unauthorised structures of some squatter huts	Substantiated	1
2015/3375B	Failing to take proper enforcement action against unlawful occupation of Government land	Unsubstantiated	2
2015/3419	Unreasonably concluding that parking on a private road does not amount to a breach of lease conditions of a housing estate	Unsubstantiated	0
2015/3803B	Ineffective enforcement action against street obstruction problem caused by a recycling shop	Unsubstantiated	2
2015/3995B	Delay in taking enforcement actions against a large-scale signboard mounted on the external wall of a building, causing nuisance to the residents of a neighbouring building at night	Unsubstantiated but other inadequacies found	1
2015/4180B	Failing to take enforcement action in respect of obstruction caused by shop-front platforms	Unsubstantiated	1
Leisure and Cultural Services Department			
2015/0099A	Delay in replying and failing to monitor the construction works of a pet garden	Partially substantiated	0
2015/1410	Unreasonably prohibiting the complainant from taking photo of reference materials in a public library	Unsubstantiated	1

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2015/1820B	Failing to monitor the selection of athletes	Unsubstantiated	0
2015/1960C	Shirking responsibility in handling a complaint about a decayed tree	Unsubstantiated	0
2015/3144B	Failing to follow up the problem of illegal shelters erected near a beach by some barbecue site operators	Unsubstantiated	1
2015/3502(I)	Refusing to provide the tree inspection report of a fallen tree on grounds of "internal documents", breaching the Code on Access to Information	Substantiated	2
Manadatory Provident Fund Schemes Authority			
2014/4847(R)	(1) Unreasonably insisting on providing only in transcript form the record of a telephone conversation (substantiated); (2) Failing to handle a data access request in accordance with its established guidelines and code (unsubstantiated); and (3) Unreasonably refusing to accept verbally made complaint against the staff (partially substantiated)	Partially substantiated	2
Marine Department			
2014/4448	(1) Impropriety in processing the complainant's disciplinary inquiry (substantiated); (2) Failing to explain the decision of the disciplinary panel (substantiated); (3) Unreasonably prolonging the complainant's period of suspension (substantiated); (4) Delay in responding to his appeal (substantiated); and (5) Improper procedures in amending the application requirements (substantiated)	Substantiated	13
2014/4504(I)	Refusing to reveal the identity of non-official members of the disciplinary panel	Substantiated	2
2015/0433	Unreasonably requiring the complainant to provide an eyesight certificate for replacement of his Certificate of Competency for Pleasure Vessel	Substantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Planning Department			
2014/2060C	Shirking of responsibility and failure to revise its plan for a piece of Government land	Unsubstantiated but other inadequacies found	0
2014/4779B	Failing to follow up properly the complainant's complaints and objections regarding two planning permissions	Unsubstantiated	0
2015/0923	(1) Unreasonably refusing to provide the complainant with the number of authorisations her group had obtained for making oral submissions at the hearings of the Town Planning Board (unsubstantiated); and (2) Failing to allocate sufficient time to the complainant's group, pursuant to the number of authorisations the group had obtained, for making oral submissions at the above hearings (unsubstantiated)	Unsubstantiated	0
2015/0925	(1) Failing to take enforcement action against storage of metal wastes and operation of heavy machinery in several land lots (partially substantiated); and (2) Failing to inform the complainant of its investigation results (unsubstantiated)	Partially substantiated	2
Post Office			
2015/1157 2015/1245 2015/1681 2015/1708 and others	Improper handling of tracing enquiries and claims for compensation on the loss of registered mail items	Unsubstantiated	5
2015/2363	Improper handling of an application for renewal of rental of a post office box	Substantiated	3

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Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Privacy Commissioner for Personal Data			
2014/4454	(1) Delay in handling the complainant's complaint (partially substantiated); and (2) Lack of response to his enquiries (substantiated)	Partially substantiated	2
2015/0922	(1) Delay in handling a complaint (partially substantiated); (2) Not responding to the complainant's calls (unsubstantiated); and (3) Failing to provide an efficient hotline service (unsubstantiated)	Partially substantiated	1
Radio Television Hong Kong			
2015/2670(I)	Refusing to disclose the amount of money used for sponsoring an opinion survey, and improper use of public money to sponsor such a survey	Partially substantiated	1
Rating and Valuation Department			
2015/2418(I)	Refusing to provide the complainant with its advice given on the rates exemption application in respect of a small house	Unsubstantiated	0
Social Welfare Department			
2014/4697	Delay in referring a case of suspected elder abuse in a nursing home to the relevant section for follow-up action	Partially substantiated	1
2015/1360	(1) Unreasonably suspending the processing of an application for Comprehensive Social Security Assistance after the applicant's death (unsubstantiated); (2) Delay in handling the application (unsubstantiated); and (3) Delay in replying to the complainant's enquiries about the progress of the application (unsubstantiated)	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
Transport Department			
2014/2640	Failure to properly monitor the service of bus route numbers 299X, 99 and 94	Partially substantiated	3
2014/5176B	(1) Failure to take into account the physical, medical and social aspects of the complainant's case in considering his application for disabled person's parking permit (unsubstantiated); (2) Failure to consider the complainant's application on compassionate grounds (unsubstantiated); and (3) Failure to inform the complainant of the outcome of its meeting with the Hospital Authority (unsubstantiated)	Unsubstantiated	0
2014/5186A	Unreasonably rejecting the complainant's application under the Ex-gratia Payment Scheme for Phasing Out Pre-Euro IV Diesel Commercial Vehicles	Unsubstantiated	0
2015/0117	Prolonged booking time for vehicle examination at designated car testing centres	Unsubstantiated	14
2015/0280	Prolonged booking time for vehicle examination at designated car testing centres	Unsubstantiated	14
2015/0324B	Failing to follow up properly the problems of illegal occupation or obstruction of metered parking spaces by two garages and vehicles crossing the pavement in front of the garages	Unsubstantiated	0
2015/1037	(1) Failing to urge the management company of a private residential estate to rectify the substandard road humps (partially substantiated); and (2) Failing to inform the complainant of the case progress (partially substantiated)	Partially substantiated	6

Index of Cases Concluded by Full Investigation

Annex 7

Case No.	Complaint	Overall Conclusion	No. of Recom-mendations
2015/1595	To register an invalid address of a driving licence holder and providing the address to the Police, resulting in a fixed penalty notice wrongly sent to the complainant	Substantiated	6
2015/1869	Unreasonably allowing an estate management company to misplace a road hump and its relevant warning sign outside the complainant's house	Unsubstantiated	0
2015/2325B	Failure to combat illegal carriage of passengers for hire or reward by unlicensed private cars booked through mobile phone apps	Unsubstantiated	5
2015/2438B	Failure to combat illegal carriage of passengers for hire or reward by vans	Unsubstantiated	4
2015/2550A	Failure to regulate the use of electric mobility device for the disabled	Unsubstantiated	0
2015/2581	Failing to urge an estate management company to rectify substandard road humps in the estate	Partially substantiated	5
2015/3391	Delay in handling and unreasonably rejecting the complainant's Personalised Vehicle Registration Mark application	Partially substantiated	2
2015/3918	Failure to regulate the use of personal electric mobility device	Unsubstantiated	3
Urban Renewal Authority			
2015/0847B	Unreasonably restricting non-HKID holders from applying for certain building maintenance subsidies	Unsubstantiated	0
Water Supplies Department			
2014/4890B	Shifting the responsibility to the complainant for maintenance of the water mains system underneath the slope and the bus terminus of a public housing estate	Unsubstantiated	0

Summaries of Selected Cases Concluded by Full Investigation

Annex 8

(The summaries of selected cases in this Annex cover the main allegations and related conclusion of those complaints. For details of the overall conclusion and number of recommendations, please refer to Annex 7)

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)



Buildings Department ("BD")

Case No. OMB 2014/5636 – Removal of unauthorised building works items

Allegation: delay in causing the removal of unauthorised building works items – substantiated

Details of Complaint

The complainant reported to BD in 2013 that there were unauthorised building works ("UBW") items on the podium flat roof of a building. Subsequently, BD issued removal orders and later instituted prosecutions against the owners concerned. However, the UBW items remained. The complainant was dissatisfied that BD had delayed causing the removal of those UBW items.

Our Findings

2. It was as early as in 2006 that BD found the two UBW items, then newly built, attached to two adjoining flats ("Flat 1" and "Flat 2") on the podium flat roof of the building. Under BD's established enforcement policy, those UBW items fell into the category of actionable UBW items subject to higher priority for enforcement actions.

3. Between 2007 and 2010, BD issued removal orders to the owners of the two flats, but the owners did not comply with the orders. Consequently, BD issued warning letters to them and later decided to institute prosecution. Meanwhile, the ownership of Flat 1 changed, with the details of the new owner not yet registered. BD, therefore, withheld prosecution against the owner of Flat 1, and instead issued an advisory letter to the former owner, urging prompt removal of the UBW item attached to Flat 1 on the flat roof. Later, BD succeeded in prosecuting the owner of Flat 2 for non-compliance with the removal order. Afterwards, having confirmed the identity of the new owner of Flat 1, BD issued a superseding order, demanding removal of the UBW item attached to the flat. On receiving the complainant's complaint in 2013, BD asked its consultants to conduct another inspection. Based on the inspection findings, BD issued warning letters to the owners of the two flats and later instituted prosecution against them.

4. In 2014, the court fined the owners of Flat 1 and Flat 2 for their failure to comply with the superseding order and the removal order. However, the UBW items continued to exist. Hence, BD issued warning letters to the owners again in January 2015, making it clear that it would institute prosecution again, appoint a contractor to remove the UBW items and recover from them the costs incurred. In March 2015, BD issued a Notice of Intention to Apply for a Closure Order ("the Notice") to the owners, and they had the UBW items removed shortly afterwards.

BD's Explanation

5. BD indicated to us that between 2006 and 2012, the workload of its Special Task Section had been exceptionally heavy. Besides following up on cases involving newly built UBW items, that section also needed to handle a huge number of outstanding cases and to prepare for internal restructuring for the implementation of the Mandatory Building Inspection Scheme.

6. BD admitted undue delay in this case. Nevertheless, after redeployment of resources in 2014, the Department had expedited its processing of outstanding cases and stepped up prosecutions for non-compliance of statutory orders.

Our Comments

7. As early as in 2006, BD had categorised the UBW items as actionable items subject to higher priority for enforcement actions. However, the owners concerned did not remove those UBW items until after BD had issued the Notice in March 2015, making it clear that it would appoint a contractor to remove them. Prior to that, even though BD had initiated prosecution twice against the owners for non-compliance of removal orders and issued three warning letters, the owners simply ignored BD's actions. As a result, those UBW items had existed for nine years. It was indeed ironic that BD's enforcement actions which were supposed to have been given "higher priority" had dragged on for so long.

8. Had BD been more decisive and issued the Notice earlier, the UBW items would have been removed long ago.

9. In fact, similar cases of delay were quite common and BD often attributed such delays to heavy backlog of cases and inadequate manpower. We considered that BD should be more determined in taking enforcement actions, thus making better use of its resources and enhancing its efficiency, in resolving problems.

Conclusion and Recommendation

10. In view of the above, The Ombudsman considered the complaint substantiated.

11. The Ombudsman urged BD to conduct a comprehensive review of its enforcement strategy in order to prevent recurrence of similar unacceptable delays.

A case of ineffective enforcement actions



Customs and Excise Department ("C&ED")

Case No. OMB 2015/1222 – Declaration of dutiable commodities

Allegation: unreasonably accusing the complainant of failing to declare dutiable commodities and imposing a fine on him – unsubstantiated

Details of Complaint

The complainant indicated that on the day he returned to Hong Kong through Lo Wu Control Point, the Red Channel there had been cordoned off and no one was on duty. He then went to the Green Channel and asked the Customs Officer there how he should declare the ten packs of cigarettes he was carrying. However, the officer accused him of failing to declare dutiable commodities, thereby violating the Dutiable Commodities Ordinance ("the Ordinance"). He was subsequently issued a Notice to Defender ("the Notice") and demanded to pay the tax and fine specified within ten days.

Our Findings

2. Under the Ordinance, any person entering Hong Kong at an entry point and failing to declare or making a false or incomplete declaration to C&ED the quantity of dutiable goods he is carrying which are in excess of the exempted quantities (19 for cigarettes) commits an offence and may be prosecuted. On the other hand, the Ordinance confers on the Commissioner of Customs and Excise "the power to compound an offence", i.e. he can allow the offender to choose between paying a penalty, or being prosecuted and having the goods confiscated.

3. C&ED has in place a Red and Green Channel System at all entry points. Incoming passengers who have goods to declare should proceed to the Red Channel and make a declaration to the Customs Officers; those who do not carry any dutiable goods or have dutiable goods complying with the exempted quantities should use the Green Channel.

Response from C&ED

4. C&ED pointed out that on the night of the incident, the Red and Green Channels at Lo Wu Control Point were open as usual with Customs Officers on duty. The complainant, after completing the arrival procedures, went straight to the Green Channel. Talking on his mobile phone, the complainant lowered his head while walking along the far side of the Channel, away from the duty officers. A Customs Officer stopped him and demanded to check his knapsack, in which 200 undeclared cigarettes were found. In accordance with the internal instructions on compounding of offences, the Customs Officer issued a Notice to the complainant. C&ED stressed that the complainant had neither tried to contact anyone nor made any attempt to declare the dutiable goods he was carrying before being intercepted.

Our Comments and Conclusion

5. After scrutinising the CCTV footage and other relevant materials provided by C&ED, we considered that the Department's account of the incident tallied with the CCTV footage. While he could have chosen the Red Channel and made a declaration for the cigarettes, the complainant used the Green Channel instead and did not attempt to declare the goods. It was proper for the Customs Officer to intercept him, check his knapsack and issue to him the Notice. The case had been handled in accordance with established rules and procedures and there was no maladministration.

6. The complainant contested C&ED's account of the incident and questioned the veracity of the CCTV footage. Yet, he did not produce any evidence in support of his query and failed to attend a meeting with our investigator to explain his case. This Office, therefore, could not accept his one-sided story.

7. In view of the above, The Ombudsman considered the complaint unsubstantiated.



Department of Health ("DH")

Case No. OMB 2015/3698 – School Dental Care Service

Allegation: unreasonably refusing to let the complainant's son join the School Dental Care Service – substantiated

Details of Complaint

The complainant applied to DH for School Dental Care Service ("SDCS") for her son, who was receiving education at home. DH rejected her application on the grounds that her son was not admitted to any school. She contended that her son was entitled to this service as a permanent Hong Kong resident, and DH was unfair in rejecting her application through "administrative means".

Our Findings

SDCS Target Group and Eligibility Criteria

2. Started in 1980, SDCS is a primary dental health care scheme for all primary school children (including those who are attending special schools) in Hong Kong.

DH's Response

3. Since its commencement, SDCS has been providing services to children at school and scheme enrolments are made via schools. This mechanism has all along been effective. As such, DH adopted a consistent and fair approach by accepting only applications from primary students or students from special schools.

Our Comments

4. In our view, since the purpose of SDCS is to provide dental and oral care services for children from a certain age group, DH should not have limited the target group of service to children at schools and accepted only applications from schools just for the sake of administrative convenience.

5. As a matter of fact, DH's practice has neglected the needs for dental care service of those children who cannot attend primary schools due to some special learning needs. To our understanding, taking into account the special learning needs of some children, the Education Bureau will not indiscriminately prohibit such children from receiving homeschooling. DH should likewise give equal treatment to these children. Otherwise, it will be unfair to them and violate the original intent of the SDCS.

Conclusion and Recommendations

6. In this light, The Ombudsman considered the complaint substantiated.

7. We were pleased that DH subsequently reviewed the scope of SDCS and decided to provide with immediate effect dental care service to children who are aged 6 to under 12 and receiving education at home.

A case of lack of flexibility



Education Bureau ("EDB")

Case No. OMB 2014/3889 – Telephone recording request

Main allegation: unreasonably refusing a request from a member of the public to record a telephone conversation – substantiated

Details of Complaint

During a telephone conversation with an EDB officer ("Officer A") about the progress of his complaint case, the complainant asked whether he could record the conversation ("the Request"). Officer A refused the Request, and then remained silent. The complainant thus complained to EDB about the incident. The Bureau replied to him that Officer A had decided to stop talking to him because he was recording the conversation without Officer A's consent.

2. The complainant complained to us that Officer A had unreasonably refused the Request and that EDB should not have approved of Officer A's decision.

Response from EDB

3. According to EDB, Officer A refused the Request in order to protect her own personal data and privacy. It is true that Officer A had, out of such concern, stopped talking, but she did continue listening attentively to the complainant until he hung up. Moreover, Officer A issued an email to the complainant afterwards, explaining that if a member of the public wants to record his/her telephone conversation with an EDB officer, he/she should first obtain the officer's consent. He/she may also consider making a complaint or enquiry in writing or in person.

4. EDB had sought legal advice on handling the public's requests to make audio recordings. The Bureau was given to understand that its officers may consider accepting such requests on a case by case basis. EDB also has established procedures and guidelines that its officers should only make an audio recording with the caller's consent. If the caller refuses to give consent, the officer should advise the caller to consider lodging his/her complaint or making his/her enquiry in writing or in person. In the light of the above, Officer A told the complainant that she did not consent to the Request.

Our Comments

5. We noted that before refusing the Request, Officer A had not enquired of the complainant about his purpose so as to assess whether the Request was justified. We would consider it unreasonable of Officer A to refuse the Request if the complainant had merely intended to keep a record of the conversation. After all, Officer A was talking with him in the course of discharging her duty and the content of their conversation was only about official matters. We could not see how acceding to the Request would infringe on her privacy.

6. Moreover, after refusing the Request, Officer A did not give the complainant an explanation immediately. She abruptly stopped talking and became a mute listener. The way she handled the matter was clearly improper.

7. EDB's guidelines only stipulate that its staff should seek consent from the caller before making an audio recording. Indeed, there is no similar requirement imposed on the caller to obtain consent from the staff. We considered that Officer A should not have relied on those guidelines to refuse the Request, and neither should EDB have approved of the way she handled the telephone conversation.

Conclusion and Recommendation

8. Based on the above analysis, The Ombudsman considered the allegation in paragraph 2 above substantiated.

9. The Ombudsman recommended that EDB review its officers' practice for handling audio recording requests from members of the public and formulate proper guidelines to avoid occurrence of similar complaints.

A case of inadequate guidelines and improper handling



Environmental Protection Department ("EPD") and Lands Department ("Lands D")

Case No. OMB 2014/5509A&B – Foul water leakage

Allegation:
EPD – failing to handle properly a complaint about foul water leakage, allowing the problem to persist – unsubstantiated

Lands D – same – substantiated

Details of Complaint

The complainant complained to this Office that EPD and Lands D had not properly handled her complaint about sewage leakage from a septic tank.

2. It transpired that the complainant had noticed sewage leakage from the septic tank of a village house near her residence, with foul water accumulating on a footpath behind the village house. She called 1823 to lodge a complaint and the case was referred to EPD and Lands D for action.

3. Having identified the septic tank as the source of sewage leakage after some dye-tracing tests, EPD asked the occupants of the village house to clear the septic tank. However, the leakage persisted. EPD indicated that giving verbal advice to the owners of the house was all that the Department could do. The local District Lands Office ("DLO") under Lands D initially told the complainant that it could not provide any assistance regarding environmental nuisance or pollution problem. It was not until it had received a written complaint from the complainant that DLO wrote to the owners of the house, requiring repairs to the septic tank. The sewage leakage nevertheless persisted.

EPD's Explanation

4. EPD noted that in investigating the leakage, it had conducted dye-tracing tests as appropriate and asked the occupants of the house to clear the septic tank. It had also informed DLO of its findings and requested the latter to follow up. Since the leakage had not contaminated the waters in the vicinity, EPD could not take any enforcement action under the Water Pollution Control Ordinance.

Lands D's Explanation

5. According to Lands D, DLO was at first unable to confirm the location where the foul water accumulated, because the complainant had not stated the door number of the village house and its exact location. Moreover, when DLO staff conducted site inspections, they could not identify the source of foul water by visual observation. Therefore, legal advice had to be sought as to whether the test results provided by EPD were sufficient for Lands D to take lease enforcement action, i.e. copying any warning letters issued to the Land Registry ("LR") for registration, on the failure of the owners of the house to comply with the relevant lease conditions. Considering the time required for such consultation, Lands D first issued advisory letters to the owners of the house requesting rectification of the problem. Upon receipt of the legal advice, Lands D issued warning letters to the owners of the house, indicating that it would consider copying the letters to LR for registration should the problem persist.

Our Comments

6. We considered EPD to have performed its duty in pursuing the case and tried to resolve the problem by actively liaising with the occupants of the house and DLO.

7. As regards Lands D, while being the department responsible for regulation of village houses, it had failed to follow up the case promptly or take effective actions to stop as soon as possible the serious environmental nuisance caused by the breach of the lease conditions by the village house concerned. Lands D did not seek legal advice until a month or so after its issuance of advisory letters. Clearly, the Department had not taken the complaint seriously, making people wonder whether it had actively attempted to resolve the problem.

Conclusion and Recommendations

8. In view of the above, The Ombudsman considered the complaint against EPD unsubstantiated, but the complaint against Lands D substantiated.

9. The Ombudsman urged Lands D to direct DLO to follow up the case closely to ensure that the owners of the village house would comply with the requirements stated in the warning letters and rectify the irregularity before the prescribed deadline.

A case of lax enforcement action



Food and Environmental Hygiene Department ("FEHD")

Case Nos. OMB 2014/4775; OMB 2014/4897; OMB 2014/4907; OMB 2014/5543; OMB 2014/5546 – Problem of street traders of mobile phones

Allegation: weak enforcement, thereby condoning street traders' illegal hawking activity and tolerating the street obstruction they caused – substantiated

Details of Complaint

Five complainants lodged their complaints separately with this Office, alleging that since September 2014, a large number of people ("street traders") had been buying in and selling mobile phones of new models on the pavements along two streets in Causeway Bay and Mong Kok. Some of them even hoisted sun umbrellas, causing serious obstruction to pedestrians. Some of the complainants had reported the problem immediately to the FEHD officers on duty nearby, but the officers did not take any enforcement action.

2. The complainants were dissatisfied that FEHD had failed to take rigorous enforcement action, thereby condoning the street traders' illegal hawking activity and tolerating the street obstruction they caused.

Relevant Legislation and Enforcement Guidelines

3. According to the legal advice obtained by FEHD, street traders' buying-in of mobile phones from passers-by in public places does not constitute hawking. The street traders in this case did not meet the legal definition of "hawkers", as they were only "buying" and not "selling" the phones. Besides, the street traders and the passers-by who sold mobile phones to them were engaged in one-off transactions only. The provision relating to hawking under the Public Health and Municipal Services Ordinance ("PHMSO") (the "Hawking Provision") was, therefore, not applicable.

4. FEHD's enforcement guidelines stipulate that if a street trader is causing obstruction but not engaged in hawking activity, FEHD normally would not take enforcement action unless there is a complaint and/or when serious obstruction is found. Enforcement action may include invocation of the Summary Offences Ordinance and issuance of a verbal warning to the offender. If the street trader refuses to leave, or leaves upon warning but returns to resume his/her activity shortly afterwards, FEHD officers can make an arrest.

5. If a street trader's buying-in activity causes obstruction to FEHD's scavenging operations, the Department can invoke the PHMSO and take such enforcement action as issuing a Notice to Remove Obstruction, removing the articles causing obstruction, or even instituting prosecution.

FEHD's Actions

6. FEHD had taken the following actions against the street traders in Causeway Bay and Mong Kok:

(1) issuing verbal advice and/or verbal warning to the street traders and conducting joint operations with the Police to disperse them, though without instituting prosecution;

(2) affixing Notices to Remove Obstruction to the articles causing obstruction, and removing those not cleared by the deadline;

(3) deploying plain-clothed officers to conduct site inspections, though they were eventually unable to invoke the Hawking Provision to institute prosecution because while some street traders were found intermittently selling the mobile phones they had bought in, they did not peddle or tout for business or display the selling prices in the process, and no on-site cash transactions were seen; and

(4) arresting and prosecuting a street trader for illegal hawking of mobile phones.

Our Observations and Comments

7. Our investigator conducted several site inspections in Causeway Bay and Mong Kok and found that:

(1) on most occasions, street traders stationed themselves and placed articles on the pavements, causing serious obstruction to pedestrians;

(2) quite a few street traders opened their backpacks or suitcases to display mobile phones of various models to passers-by, at the same time holding placards to introduce the different models;

(3) some street traders approached our investigator to tout their mobile phones, or quoted the prices of the mobile phones when asked, and indicated the availability of stocks; and

(4) some street traders placed suitcases filled with mobile phones beside them, though claiming that they were just buying in mobile phones.

8. We considered that the activities of the street traders had caused serious street obstruction. Yet, FEHD just repeatedly issued verbal advice/warning or affixed Notices to Remove Obstruction, which did not help to curb the street traders' unlawful activities.

9. Furthermore, during our site inspections, street traders were easily found to be touting mobile phones, telling passers-by the prices and arrangements for collection of goods. They were clearly hawking. FEHD's argument of lack of concrete evidence was indeed a lame excuse for not taking enforcement action.

Conclusion and Recommendation

10. In the light of the above, The Ombudsman considered the complaints substantiated.

11. The Ombudsman urged FEHD to closely monitor the street traders' activities and take strict enforcement action against the street traders for illegal hawking and street obstruction.

A case of weak enforcement



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2015/0764 – Handling food complaint

Main allegation: unreasonably deciding not to take legal action – substantiated

Details of Complaint

While having dinner at a restaurant, the complainant found a black, wriggling object in a dish of boiled prawns. He quickly called the Police for assistance. The case was later referred to FEHD.

2. However, some six months later, FEHD wrote to inform the complainant that after considering all the evidence, the Department had decided not to take legal action against the restaurant. The complainant found FEHD's decision unreasonable.

Our Findings

Procedures for Handling Food Complaints

3. When handling food complaint cases of this nature, the local District Office (Environmental Hygiene) ("the District Office") of FEHD would normally send the food specimen to the Department's Pest Control Advisory Section ("PCAS"), the Government Laboratory ("GL") or the Agriculture, Fisheries and Conservation Department ("AFCD") for identification or laboratory tests. The case would afterwards be referred to the Food Complaint Unit under FEHD's Centre for Food Safety for follow-up actions. If it is decided to prosecute the restaurant concerned, prosecution must be instituted within six months.

FEHD's Explanation

4. FEHD indicated that according to past experience, if the Department was to prosecute a restaurant based on foreign substance found in the food served, the Department must first identify what creature it was or the species that the substance belonged to, and also prove that the substance did not come from the food itself. In this complaint case, neither GL nor PCAS nor the conservation officer of AFCD was able to confirm what creature the substance was. Hence, FEHD could not rule out the possibility that it was a creature coming from the prawns and not some foreign substance. As there was insufficient evidence to lay charges against the restaurant concerned, FEHD only issued a warning letter to that restaurant.

Our Comments

5. As the department responsible for ensuring food safety, FEHD must handle food complaints with great care and diligence, doing its best to collect evidence, so that restaurants failing to abide by the law would be properly cautioned or punished for deterrent effect. In this case, we did not find that FEHD had done enough just by sending the substance to the aforesaid parties for laboratory tests and identification, since those parties do not appear to be experts in worms. Moreover, FEHD's decision not to take legal action was on the grounds that the Department "could not rule out the possibility that it (the wriggling object) came from the prawns". We considered that a defiance of common sense. FEHD should have submitted the substance to authorities in the field for identification, instead of crudely closing the case. Even if they still could not confirm what creature it was, FEHD should have sought legal advice from the Department of Justice on whether the evidence at hand was sufficient for taking legal action against the restaurant.

Conclusion

6. In view of the above, The Ombudsman considered the complainant's allegation substantiated.

7. Owing to the six-month time bar, FEHD could no longer change its decision on this case. The Ombudsman urged FEHD to learn from the experience, try its best to seek professional and legal advice when handling similar cases in future, with a view to taking appropriate legal action to safeguard food safety and public health.

A case of failure to take rigorous enforcement action



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2015/1628 – Food safety complaint

Allegation: failing to properly handle a food complaint in that only a warning letter was issued to the food vendor concerned without instituting prosecution – substantiated

Details of Complaint

The complainant found suspected pesticide residues on the Indian lettuce he bought from a vendor. He then complained to FEHD.

2. Subsequently, FEHD informed the complainant that the result of laboratory tests confirmed that the residue level of metaldehyde, a pesticide, in the Indian lettuce in question exceeded the maximum residue limit ("MRL") specified by law. Nevertheless, FEHD decided to only issue a warning letter to the vendor, but not to institute any prosecution. The complainant considered FEHD's handling of his case improper.

Our Findings

Regulation on Pesticide Residues in Food

3. The Pesticide Residues in Food Regulation ("the Regulation") under the Public Health and Municipal Services Ordinance ("PHMSO") aims to strengthen the regulation of pesticide residues in food in order to safeguard people's health. The MRLs for different types of food are specified in Part 1 of Schedule 1 to the Regulation.

4. The Regulation provides that no person may sell for human consumption a food which contains pesticide residues unless the pesticide residues in the food do not exceed the MRL specified or are considered not exceeding the safety reference values ("SRV") (which refer to the chronic toxicity of acceptable daily intake ("ADI") or the acute toxicity of acute reference dose (ARfD")) after FEHD's risk assessment.

FEHD's Explanation

5. On receipt of the complaint, the local District Environmental Hygiene Office sent the Indian lettuce to the Government Laboratory for laboratory tests on pesticide residues. At that time, Indian lettuce was classified under "Lettuce, Leaf". The laboratory test result showed that the level of metaldehyde in the Indian lettuce had far exceeded the limit, which was against the law.

6. However, the Food Surveillance and Complaint Section ("FSCS") under the Centre for Food Safety ("CFS") that followed up on the case later learned that the scientific name of Indian lettuce was not exactly the same as "Lettuce, Leaf". It was, therefore, inappropriate to classify the vegetable under "Lettuce, Leaf". Since Indian lettuce was no longer within any categories of food listed in Part 1 of Schedule 1, CFS had to conduct a risk assessment on the Indian lettuce in question to decide whether prosecution should be instituted.

7. After conducting a risk assessment, CFS's Risk Assessment Section ("RAS") concluded that a long-term daily consumption of Indian lettuce with the same level of pesticide residues would exceed the ADI for metaldehyde. While that level would not exceed the ARfD, adverse chronic effect on the health of average and high consumers could not be ruled out.

8. Having taken into account the legal advice provided by the Department of Justice ("D of J") on other cases, FSCS held that since RAS did not indicate clearly whether selling the Indian lettuce in question could be deemed a violation of the relevant provisions under the Regulation or PHMSO, the risk assessment report, therefore, could not be construed as proof that the vendor had violated those provisions. Even if prosecution was to be instituted, FEHD could not provide evidence that would reach the standard of proving guilty "beyond reasonable doubt". As such, FEHD would only issue a warning letter to the vendor.

Our Comments

9. We agreed to FSCS's decision to conduct a risk assessment rather than instituting prosecution based on Part 1 of Schedule 1. Nevertheless, RAS's report already clearly indicated that the pesticide residues on the Indian lettuce in question had exceeded the SRV. Based on this conclusion from RAS, FSCS should have sought advice from FEHD's senior management and D of J for a decision on whether to prosecute the vendor.

10. Moreover, after FSCS decided not to institute prosecution, it simply issued a so-called "warning letter", which was devoid of any substance or deterrent effect. Such a letter had in no way removed the health risk involved. We considered this decision too rash and perfunctory. Tasked with ensuring food safety, FEHD should take strict enforcement actions so that people's health could be safeguarded against unsafe food.

Conclusion and Recommendations

11. The Ombudsman considered the complaint substantiated.

12. The Ombudsman urged FEHD:

(1) to take effective measures to ensure that FSCS would handle similar cases more proactively and carefully in future such that correct and responsible enforcement decisions will be made; and

(2) to review its enforcement system for handling cases that involve excessive levels of pesticide residues in food to achieve better protection for people's health. It should also issue clearer instructions for the trade to follow.

A case of ineffective enforcement and faulty system

Summaries of Selected Cases Concluded by Full Investigation



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2015/1975 – Handling of food complaint

Main allegations: (1) failing to properly follow up on a food complaint – substantiated; and (2) providing inaccurate and incomplete information and conniving at the operation of an unlicensed restaurant – unsubstantiated

Details of Complaint

The complainant and several friends bought some yogurt ice-cream ("the yogurt") at a restaurant ("Restaurant X"). Two of them felt sick after eating the yogurt and had to seek emergency treatment at a hospital. The complainant lodged a complaint with FEHD that night.

2. Later on, he checked FEHD's website and found that Restaurant X was not among the licensed restaurants in the commercial building where it was located ("the Building"). Nevertheless, FEHD stated in its written reply to him that Restaurant X was a licensed general restaurant with permission to sell frozen confectionery. The Department also indicated that its officer had conducted an investigation at Restaurant X and found its hygiene condition and storage of frozen confectionery satisfactory.

3. The complainant then complained to this Office against FEHD for:

(1) failing to follow up on his food complaint properly, including the Department's failure to collect a food sample from Restaurant X promptly for laboratory tests; and

(2) providing inaccurate and incomplete information on its website regarding Restaurant X's licensing status and conniving at the operation of an unlicensed restaurant in the Building.

Our Findings

FEHD's Procedures for Handling Food Complaints

4. According to FEHD's Guidelines on Procedures on Handling of Food Complaints ("the Guidelines"), its officers must, upon receipt of a food complaint, arrange an interview with the complainant as soon as possible for conducting preliminary investigation and collecting evidence. If the complainant cannot provide a food sample, the officer should go to the shop concerned to collect a food sample for laboratory testing. In addition, the officer should refer the case to the Food Complaint Unit ("FCU") of the Centre for Food Safety ("CFS") under FEHD within four working days of receiving the complaint.

Allegation (1)

FEHD's Response

5. FEHD's explanation regarding the incident was as follows.

6. The complainant lodged his food complaint around 11:30 pm on 25 April 2015. An FEHD Health Inspector ("Officer A") visited Restaurant X for investigation at 00:10 the next day, when its business hours were already over. Due to his lack of experience, Officer A thought that there was no need to collect any food sample in such circumstances. So, he just gave the person-in-charge some hygiene education. What he should have done was to collect a sample immediately since yogurt is a dairy product.

7. Officer A's supervisor ("Officer B") received his investigation report on 30 April, which was immediately followed by a public holiday, a weekend and then Officer B's vacation leave. Officer B, therefore, did not refer the case to FCU for follow-up action until 8 May.

8. Noting that FEHD had not received any complaint against Restaurant X in the three months preceding the incident, Officer C of FCU did not go there until 19 May to collect a sample of the yogurt. Moreover, he mistook yogurt as not belonging to the food category that requires "formal sampling" (which means that the vendor/manufacturer of the food may be prosecuted if the sample fails the laboratory test). He merely took an "informal sample" (which is used solely for routine monitoring).

9. The laboratory test result showed that the "informal sample" of the yogurt contained a coliform count of 630 per gram, which exceeded the legal limit of 100 per gram. CFS issued a press release on 28 May urging the trade to stop selling that kind of yogurt at once and the public to stop consuming it. CFS also issued a letter to Restaurant X, warning it of possible prosecution. Sale of yogurt of that kind resumed in Restaurant X in July and Officer C went there five times in two months to collect "formal samples". As laboratory tests confirmed the bacterial count of those samples to be within the legal limit, FEHD decided not to prosecute Restaurant X.

Our Comments

10. As could be seen from the above, the FEHD officers made a number of blunders in handling the complainant's food complaint, including delay in referral and failure to collect samples of the yogurt immediately.

11. It is our view that FEHD should be rigorous and prompt in handling complaints concerning food safety. To protect public health, it should collect evidence in a timely manner for instituting prosecution against restaurants selling unsafe food. In this case, if Officer C had collected a "formal sample" when he first went to Restaurant X, there would have been sufficient evidence for FEHD to institute prosecution.

12. The Ombudsman considered allegation (1) substantiated.

Allegation (2)

FEHD's Response

13. FEHD explained to this Office that there were five licensed restaurants in the Building, including Restaurant X. It was only because Restaurant X had not specified the name of the Building in its registered address that the complainant could not find Restaurant X on the list of licensed restaurants on FEHD's website just by entering the name of the Building. FEHD pointed out that there was in fact no unlicensed restaurant in the Building.

Our Comments

14. With FEHD's clarification, The Ombudsman considered allegation (2) unsubstantiated.

Recommendation

15. The Ombudsman urged FEHD to learn from this incident and remind its staff to be rigorous and prompt in pursuing food complaint cases. In particular, they should collect evidence in a timely manner for instituting prosecution against restaurants selling unsafe food.

A case of delay and failure to handle a food complaint rigorously

Summaries of Selected Cases Concluded by Full Investigation



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2015/2525 – Action against breach of market stall tenancy agreements

Allegation: failing to take enforcement actions to rectify breaches of market stall tenancy agreements – substantiated

Details of Complaint

The complainant had found that quite a few frozen meat stalls in an FEHD market ("the Market") were, in breach of the tenancy agreements, being used as an office, a cold storage for food and a workshop for cutting frozen meat, and a *siu mei* (roast meat) stall had nothing but baskets in it. She considered FEHD to have failed to take proper actions to rectify such breaches, which had led to inadequate market service for the residents in the neighbourhood.

Our Findings

Regulation of Market Stalls

2. FEHD's tenancy agreement for market stalls stipulates that the tenant may use the stall only for the purpose of selling the types of commodities specified in the agreement.

3. FEHD had delegated the day-to-day management of the Market to its contractor, who, upon detection of any breach of the tenancy agreements, should take actions, including issuance of verbal warnings to the tenants concerned and reporting of the matters to the District Environmental Hygiene Office ("DEHO") of the Department.

4. DEHO officers themselves conduct daily inspections at the Market and will issue verbal warnings to those tenants found to have breached their tenancy agreements. Should a tenant commit the same breach again in the ensuing six months, DEHO will issue a warning letter to the tenant. Three warning letters issued within six months may result in the tenancy being terminated by FEHD.

5. Our investigation revealed that this case involved a total of seven market stalls, two of which (Stalls I and IV) could be used for selling frozen meat only, and the remaining five (Stalls II, III, V, VI and VII) for *siu mei*.

Photographs Provided by the Contractor/DEHO

6. Photographs taken by the contractor and DEHO officers during inspections of the Market between April 2013 and May 2015 showed that Stall I was fitted with partitions, office lightings, split type air-conditioners, office desks and chairs, and computer equipment. Someone could be seen doing office work inside. Furthermore, one had to open a door to enter Stall I. As regards Stalls II, III and IV, they were each fitted with a huge walk-in metal cabinet, while there were tools, goods and miscellaneous articles in Stall V. The cabinets and other goods took up most of the space of those four stalls.

Photographs Provided by the Complainant

7. The photographs taken by the complainant in June 2015 showed that: Stall I was being used as an office; the huge walk-in metal cabinet in Stall III was open and a man inside was handling goods; someone was cutting meat with meat-cutting machines in front of Stalls V and VI; and big baskets, carts and miscellaneous articles were kept in Stall VII. No food was displayed or on sale at those five stalls.

Our Observations

8. Our officer visited the Market in July and October 2015. In addition to seeing what is told in paragraph 7 above, the officer witnessed some workers handling goods around the huge walk-in metal cabinet in Stall II, and someone was cutting meat with a meat-cutting machine at Stall IV. None of the seven stalls was displaying or selling food.

9. Furthermore, the officer noticed that Stalls I and IV shared the same company name (that of "Company A") in their stall signs. Although Stalls II, III, VI and V did not have the name of Company A on their signs, the tenant of the first three stalls was a shareholder of Company A, while the registered assistant of Stall V was another shareholder.

Our Comments

10. There was evidence that Stall I had been used as an office since 2013. FEHD had issued a warning letter to the tenant, but when the breach was once more found, the Department merely issued verbal warnings again and again. Such enforcement actions were feeble, thus allowing the breach to continue, and that was utterly unacceptable.

11. We wonder why the problem could have gone unnoticed despite daily inspections by the contractor and DEHO officers. If not for complaints received, DEHO would not have even started to take action against Stall I. We considered that a serious dereliction of duty.

12. The other stalls involved were being used for purposes other than displaying and selling the types of food specified in their tenancy agreements (paras. 6 – 8 above). And yet FEHD maintained that the problem had been rectified or that no breach of the tenancy agreements had been found. We considered that the Department should conduct an in-depth investigation into the irregularities.

13. This case also exposed loopholes in FEHD's mechanism of leasing market stalls. The Department treats that merely as a commercial activity. Vacant stalls are leased to the highest bidders through open tender and FEHD does not set a limit on the number of market stalls that each person can rent.

14. We believe that the intent of FEHD's leasing of market stalls was to have different types of shops in the market so that an array of choices in terms of types and prices of goods would be available to consumers. It, however, turned out that quite a number of stalls in the Market were rented by the same person or someone associated with that person (para. 9 above). Some of the stalls had even been converted into an office or storages for goods, making up in effect a single big shop. Should the situation be allowed to continue, both the competition among stalls and the choices available to consumers would be seriously affected. It was really amiss of FEHD to have turned a blind eye to this problem and not to have ever reviewed its mechanism of leasing market stalls to identify ways to plug the loopholes.

Conclusion and Recommendation

15. In the light of the above, The Ombudsman considered this complaint substantiated.

16. The Ombudsman urged FEHD to seriously review its mechanism of leasing market stalls, the terms and conditions of its tenancy agreement and its methods of control and enforcement so as to prevent further abuse of market stalls.

A case of serious dereliction of duty



Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2015/2578 – Handling of complaints about dripping air-conditioners

Allegation: incorrect statements in advisory letters – partially substantiated

Details of Complaint

The complainant and some other flat owners of a residential building ("Building A") had received advisory letters from FEHD, which stated that the Department had received a complaint about water dripping from their air-conditioners and that if such dripping did exist, they should effect the necessary repairs. But the fact was that the complainant, and also some flat owners, had already hired a technician to inspect their air-conditioners and confirmed that there was no dripping problem. The complainant was dissatisfied that FEHD had acted perfunctorily in issuing those advisory letters without first conducting a site inspection.

Our Findings

2. FEHD explained that on receipt of the complaint, its local District Environmental Hygiene Office ("DEHO") had, accompanied by the caretaker of Building A, made an inspection from the podium of the building, and found water dripping from upper floors, though it could not identify the exact source. DEHO, therefore, issued advisory letters to the owners of all the 18 flats above the third floor, alerting them to the need to resolve the dripping problem as soon as possible.

3. FEHD admitted that those advisory letters could cause the recipients to misunderstand that there had been a complaint about water dripping from their air-conditioners. FEHD apologised for the misstatement and reminded its staff to ensure that the contents of advisory letters are true and correct.

Our Comments

4. We considered it not unreasonable of FEHD to issue advisory letters to flat owners and ask them to check their air-conditioners, with a view to resolving a dripping problem. However, it was careless of the Department to have issued the advisory letters in this case, the contents of which clearly deviated from the facts, with the exact source of dripping yet to be identified. In particular, as the complainant had previously checked her air-conditioners and confirmed that there was no dripping, no wonder the letter made her feel puzzled and dissatisfied.

Conclusion

5. In this light, The Ombudsman considered the complaint partially substantiated.

A case of carelessness in action



Food and Health Bureau ("FHB"), Development Bureau ("DEVB"), Department of Health ("DH"), Planning Department ("Plan D"), Lands Department ("Lands D") and Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2014/2060A-E&G – Failure to properly utilise Government land resources

Main allegations:
FHB – failure to properly respond to the complainant's request and being biased towards DH – unsubstantiated but other inadequacies found

DEVB – failure to properly respond to the complainant's request and being biased towards Plan D – unsubstantiated but other inadequacies found

DH – making extended reservation of a piece of Government land for a clinic without a construction schedule, resulting in a waste of Government resources and public money – unsubstantiated

Plan D – shirking of responsibility and failure to revise its plan for the Government land – unsubstantiated but other inadequacies found

Lands D – failure to manage properly the Government land, resulting in a waste of Government resources and public money – unsubstantiated

FEHD – impropriety in its application for land allocation – unsubstantiated but other inadequacies found

Details of Complaint

The complainant alleged that, in view of the development and population growth in an area, FEHD planned to relocate a refuse collection point and upgrade it to a large and enclosed one. However, the Government land that FEHD applied for ("the Site") in May 2012 had already been reserved for DH to build a Government clinic.

2. According to the complainant, FHB, DEVB, DH, Plan D and Lands D had failed to properly utilise the Site in that: Lands D had allowed DH to reserve the Site for an extended period without a schedule for building the clinic; FHB had failed to explain why it was not feasible to build both a clinic and a refuse collection point on the Site; Plan D had shirked its responsibility and failed to revise its plan for the Site to build a refuse collection point; DEVB had failed to coordinate the sharing of the Site between DH and FEHD; and there was impropriety on the part of those Government departments in the consultation on reserving the Site for building a clinic or a refuse collection point, namely ignoring local objections to building on the Site a clinic that would provide methadone treatment services and not building the refuse collection point there only because of one objection.

Our Findings

3. Our investigation into this complaint also covered whether FEHD had properly handled the application regarding the Site.

The Site

4. The Site was designated for "Government, Institution or Community" use on the relevant outline zoning plan and reserved earlier for a clinic. In August 2011, the planning and engineering study of the new development area ("the Area") that covered the Site commenced, with the aim of reviewing the overall planning for the land uses within the Area.

Response from FHB and FEHD

5. According to FHB, the construction of the clinic should be in line with the development and demographic changes in the Area, and the estimated new population of the Area (about 175,000) would be moving in by phases between 2024 and 2034. Therefore, no fixed schedule for the clinic could be provided.

6. FEHD explained that removal of a refuse collection point normally did not require prior consultation with FHB, but it would seek approval from FHB when applying for funding. In June 2013, FHB granted policy support to FEHD's proposal of relocating the refuse collection point.

7. Between 2008 and 2010, FEHD had considered 12 locations for building the refuse collection point but they were either reserved for other uses or deemed unsuitable by the Environmental Protection Department. In May 2012, FEHD applied to Lands D for the Site to build the refuse collection point, only to learn in early 2013 that the Site had already been reserved for building a clinic.

8. As regards Plan D's proposal, the Health Branch under FHB advised that the clinic and the refuse collection point should not co-exist on the Site due to concerns about public hygiene and patients' health. It also confirmed that the Site should be reserved for building a clinic to cater for the long-term demand for medical services in the Area. Nevertheless, if Plan D could find other suitable sites within the Area, FHB would agree to use the Site for building the refuse collection point.

9. FHB clarified that the Government had not carried out any consultation about reserving the Site for the clinic or had any plan to provide methadone treatment services there. Meanwhile, FEHD clarified that the complainant's allegations regarding the consultation on building the refuse collection point on the Site was not true.

Response from DEVB and Plan D

10. Plan D had no objection to FEHD's application and suggested that DH and FEHD consider sharing the Site, but the Health Branch considered it inappropriate to do so. DH made it clear that the Site should be reserved for building the clinic unless an alternative location within the Area could be found. Plan D explained that it had to balance the demands for sites among different Government departments and it could not cancel a site reservation in the absence of a consensus among the departments concerned.

11. Since early 2015, DEVB and Plan D had actively followed up with FHB, FEHD and DH on the identification of new sites for the refuse collection point and the clinic. In mid-2015, FHB accepted one of the proposed sites for the clinic and agreed to use the Site for the refuse collection point instead. Subsequently, Lands D allocated the Site permanently to FEHD in July 2015 for building the refuse collection point.

Our Comments

12. Land is a very precious resource in Hong Kong. Site searching, therefore, has always been a difficult and time-consuming task. Since both the clinic and refuse collection point are essential community facilities in the Area, it was not unreasonable for FHB to support the land allocation applications for both uses. FHB had already explained why sharing of the Site by DH and FEHD was not feasible. Moreover, as there was still a long time before new population

would move into the Area, DH's reluctance to give up the Site even though it had no fixed schedule for the clinic was understandable. As a matter of fact, when Plan D proposed another suitable site for the clinic, DH immediately agreed to relinquish the Site.

13. We considered that Lands D had in general handled this application properly and there was no impropriety involved.

14. To ensure proper utilisation of the precious land resources, DEVB and Plan D had to balance the demands for land from various departments when working out the land planning. Despite the past deadlock over the use of the Site between DH and FEHD, the problem was eventually resolved in mid-2015. There was no significant maladministration or delay.

15. Based on the above, The Ombudsman considered all the allegations unsubstantiated.

Other Observations

16. We considered that inadequate communication among the bureaux and departments had caused the issue to drag on for years. Both bureaux attributed the problem to each other's unclear stand, and questioned whether the other party had followed the work procedures or given proper replies. It reflected their compartmental mentality and lack of cooperation, which resulted in their failure to promote better communication and coordination to resolve the problem.

17. We believe that, since Plan D has the latest information about reservations of Government land and the overall planning of an area, if FEHD had maintained sufficient communication with Plan D, the latter could have provided the necessary assistance and suggestion during the former's land search process. FEHD, however, had tried to find a suitable site for the refuse collection point on its own instead of seeking assistance from Plan D. As a result, FEHD had to go through many unfruitful attempts before success.

18. According to the prevailing formal procedures for site selection, Government departments should obtain policy support from their bureaux before making a request for land allocation. Yet, FEHD normally would not consult FHB before planning to move a refuse collection point. Such practice was not in line with the formal procedures. FHB and FEHD should, therefore, review the internal guidelines. DEVB and Plan D also seemed to be aware of or tacitly agree to FEHD's practice. If DEVB considered such practice acceptable, it should include it in the formal procedures/guidelines so that other departments could have clear instructions to follow when processing similar applications.

Conclusion and Recommendations

19. Overall, The Ombudsman considered the complaint against DH and Lands D unsubstantiated, and the complaint against FHB, DEVB, Plan D and FEHD unsubstantiated but with other inadequacies found.

20. The Ombudsman recommended that:

(1) DEVB, Plan D and Lands D examine whether it is appropriate for FEHD to adopt the existing practice which is different from the formal procedures for land allocation application. If such practice is regarded as appropriate, it should be included in the formal procedures/guidelines; and

(2) FHB and FEHD review their existing internal guidelines on site selection for refuse collection points to ensure that they are in line with the requirements in the formal procedures for land allocation.

A case of failure to comply with guidelines

Summaries of Selected Cases Concluded by Full Investigation



Hong Kong Housing Society ("HKHS")

Case No. OMB 2014/4538 – Application for transfer of public housing tenancy

Main allegation: failing to handle properly the complainant's application for transfer of public housing tenancy and trying to evict her from the present unit – unsubstantiated but other inadequacies found

Details of Complaint

The complainant lived with her family members in a public housing unit under HKHS and her father was the principal tenant. In 2011, her parents passed away one after another and HKHS learned about this in 2012. HKHS then terminated the tenancy agreement and notified the complainant that she could apply for taking over the tenancy if she had housing needs but then she must be relocated as stipulated to a smaller unit. Subsequently, she submitted an application for taking over the tenancy.

2. In 2014, HKHS required the complainant to sign a Licence for temporary stay on one-year fixed term. She considered HKHS to have failed to handle properly her application for taking over the tenancy and, by requiring her to sign the Licence, attempted to evict her from the present unit.

Our Findings

Transfer of Tenancy and Relocation Arrangements

3. The HKHS public housing tenancy agreement stipulates that tenants should inform HKHS promptly of any changes to the family composition such as marriage, moving out and decease of family members included in the tenancy. In case of under-occupation due to reduction in the number of occupants, the household has to be relocated to a smaller unit. However, the household is allowed to stay in the existing unit while awaiting suitable relocation. Upon the death of the principal tenant, his/her spouse can apply for taking over the tenancy. Where no spouse is listed on the tenancy, any enlisted family member aged 18 or above can submit an application.

4. In May 2014, HKHS revised its working guidelines on transfer of tenancy, stipulating that applicants for taking over the tenancy should submit necessary documents within two months from the date of notification by HKHS and that under-occupation households, while waiting for relocation, are required to sign a Licence for temporary stay to establish a landlord-tenant relation with HKHS. When suitable units are available, HKHS will make relocation arrangements for those households in order of priority. HKHS will issue a Notice-To-Quit to a household that has refused three relocation offers.

Response from HKHS

5. In 2012, on learning that the complainant's parents had passed away, HKHS immediately explained to the complainant the procedures for taking over the tenancy and relocation arrangements. However, the complainant tried to delay the submission of her application for taking over the tenancy and indicated repeatedly her unwillingness to move to a smaller unit. Though she did submit the necessary documents in the end, she rejected all three relocation offers by HKHS. The fact that HKHS required her to sign the Licence for temporary stay was to allow her to stay in the present unit while awaiting relocation.

6. Considering the complainant's grief of loss of both parents and busy work life, HKHS tried to be understanding and did not want to be too harsh in dealing with her case. Unfortunately, as the complainant had not been cooperative, HKHS subsequently had to take a stricter approach. It issued three warning letters urging her to sign the Licence before a prescribed date and making it clear that a Notice to Quit would be issued without further notice if she failed to do so.

Our Comments

7. HKHS's understanding of the tenant's situation was commendable. Nevertheless, as an organisation managing valuable public housing resources, HKHS must ensure that it would not be unfair to those public housing applicants and overcrowded households with pressing housing needs.

8. The complainant had failed to comply with the tenancy agreement and notify HKHS of the death of her parents. She was also not cooperative on the relocation arrangements. Her attitude was certainly one reason why the problem had dragged on for several years. Yet, HKHS's failure to actively follow up her case after learning the changes in her family composition also played a part. In our view, while HKHS did not want to be too harsh, it should not be unduly lenient because that would encourage under-occupation households to continue occupying their present units.

9. We considered it reasonable that HKHS required the complainant to sign the Licence for temporary stay if she wanted to stay in the present unit. Moreover, we did not see any grounds for the complainant's allegation that HKHS had failed to handle properly her application for transfer of tenancy. In fact, it was her uncooperativeness which delayed the transfer. Nevertheless, this complaint revealed HKHS's laxation in handling such cases, which resulted in under-utilisation of public housing resources.

Conclusion and Recommendations

10. The Ombudsman, therefore, considered the complaint unsubstantiated but found other inadequacies on the part of HKHS.

11. As stated above, HKHS had revised the working guidelines regarding applications for transfer of tenancy for its staff, which were necessary remedial measures. The Ombudsman recommended that HKHS strengthen its supervision to ensure that its staff would adhere to the new guidelines and take action against tenants who have repeatedly ignored its advice in order to ensure that public resources are properly utilised.

A case of lack of initiative



Housing Department ("HD")

Case No. OMB 2014/3303 – Unauthorised alterations in public housing unit

Main allegation: misleading the complainant into thinking that the alterations she made to her public housing unit did not contravene the rules – unsubstantiated but other inadequacies found

Details of Complaint

In January 2013, the complainant was allocated a public rental housing ("PRH") unit and started renovating it after taking up residence. In March, she informed HD of the completion of the renovation works. After an HD officer conducted a site inspection and took some photographs for record purposes, HD formally issued the tenancy agreement to her.

2. However, in November 2013, HD received a report alleging that the complainant and her husband had appeared on a television programme to introduce the interior decoration of their PRH unit, and suspecting that those were unauthorised alterations. HD followed up on the case and subsequently told the complainant that a number of unauthorised alterations were found in her unit, which had caused minor seepage at the unit below. HD then demanded a reinstatement of the fixtures in her unit and the complainant was required to pay the costs of $60,000.

3. The complainant alleged that HD had misled her, such that she had all along believed that her renovation works were not in breach of any requirements. It was unreasonable for HD to enforce reinstatement after eight months.

Response from HD

4. HD stated that when completing the formalities to take up residence in the PRH unit in January 2013, the complainant signed a tenant's undertaking to acknowledge that she would adhere to the rules regarding renovation works. On the same day, the complainant also received a copy of the guidelines on categorisation of fixtures, in which all the fixtures in a PRH unit are listed under three categories. No alterations are allowed for Category A fixtures (such as walls, cooking bench and floor tiles). For alterations to Category B fixtures, tenants are required to make prior application in writing to HD. They can only make alterations to Category C fixtures without seeking approval.

5. Two days after the complainant had started the renovation works, a housing officer ("Officer X") from the estate office discovered that a partition wall in her unit had been knocked down. He at once advised the complainant to reinstate the wall. Officer X conducted a follow-up inspection several days later and confirmed that the partition wall had been rebuilt. Meanwhile, the complainant told him that the remaining renovation would be merely simple items. Officer X believed that she was referring to alterations of Category C fixtures which did not require prior approval.

6. In March 2013, Officer X conducted another inspection after the renovation works had completed. He identified a number of unauthorised alterations of Categories A and B fixtures. However, he did not immediately require the complainant to rectify the unauthorised items because he reckoned that there was no imminent threat to building structure or public hygiene, and he had other more urgent tasks in hand. Instead, he intended to follow up on the case again

at the end of 2013. As HD received the report in November, Officer X conducted a site inspection on the following day and found more unauthorised alterations in the complainant's unit.

7. HD took the view that the estate office had adopted a customer-oriented approach in handling this case, with a view to minimising any nuisance to the tenants while protecting the environment. HD finally completed the reinstatement works in the complainant's unit in March 2015, and she started paying the costs by instalments.

Our Comments

8. We considered HD to have in place established procedures to remind PRH tenants of the requirements on alteration of fixtures. Since the complainant had signed to acknowledge acceptance of the undertaking and relevant guidelines, she should be responsible for any unauthorised alterations and could hardly claim that she was unaware of the requirements.

9. Nonetheless, we did not accept that the estate office had properly handled this case. From the records of the first inspection by Officer X in January 2013, we noted that apart from knocking down an original partition wall, the complainant had also removed the cooking bench in the kitchen and the water closet pan in the toilet, both listed as Category A fixtures not allowed to be altered. There were also a few items of Category B fixtures which had been altered without prior approval. At that time, Officer X simply advised the complainant to reinstate the partition wall and took no notice of the other unauthorised items. As such, he missed the opportunity to reverse the complainant's course of action at an early stage.

10. Even if Officer X only found the unauthorised alterations in March 2013 and intended to follow up on the case eight months later, he should at least have given the complainant forewarning about the enforcement action to be taken, so as to avoid creating a false impression that HD had acquiesced in her retention of the unauthorised alterations.

11. The serious breach in this case showed that the tenant was in total disregard of her undertaking to HD, and yet HD still did not see the need to deal with this case speedily. It even tried to justify its lack of positive action on the grounds of environment protection. We agreed that, where appropriate, tenants might be allowed to keep their renovations and fittings to reduce construction wastes. However, some of the alterations in this case involved fixtures not allowed to be altered under HD's categorisation and so must be reinstated. In such circumstances, HD should not use environment protection as an excuse for its delay or non-action.

Conclusion

12. Based on the above, we agreed that HD had drawn up clear guidelines on tenants' renovation works and alterations of fixtures, and had not misled the complainant. Nonetheless, due to its lack of timely action against the unauthorised alterations in this case, HD had in effect rendered the guidelines useless and encouraged the tenant to act in defiance of HD's requirements.

13. The Ombudsman, therefore, considered the complaint unsubstantiated but found other inadequacies on the part of HD.

Recommendations

14. The Ombudsman recommended that HD:

(1) enhance its scrutiny of outstanding cases concerning unauthorised alterations of PRH units to ensure timely completion;

(2) draw up specific guidelines and step up staff training, giving clear instructions to frontline staff on the procedures and timeframe for following up cases of unauthorised alterations, and reminding them that environment protection should not be an excuse for not taking prompt action;

(3) implement an effective system for supervising officers to monitor case progress;

(4) review existing workflow and resources, with a view to shortening the time required for handling similar cases; and

(5) review regularly the effectiveness in handling cases of unauthorised alterations.

A case of lack of timely action to curb unauthorised works



Housing Department ("HD")

Case No. OMB 2014/4562 – Leasing of ward offices

Allegation: impropriety in handling two applications for lease of ward offices in public housing estates – partially substantiated

Details of Complaint

In 2008, the complainant, a District Council ("DC") member, submitted an application to HD for lease of a ward office in a public housing estate ("Office 1"). Office 1 was eventually leased to another DC member ("Councillor A") by lot. In 2014, the complainant applied for leasing a ward office in another public housing estate ("Office 2"). HD again leased the space to Councillor A because he belonged to the "first priority category for allocation". Regarding his two applications for ward offices, the complainant was dissatisfied that HD had:

(1) allowed Councillor A to surrender Office 1 only after he had been allocated Office 2; and

(2) failed to arrange for open application after Councillor A had surrendered Office 1. Instead, HD allowed Councillor B, who had earlier been invited by Councillor A to share use of Office 1, to take over the tenancy and continue to occupy the premises. The complainant considered such arrangement unfair to other DC members and smacking of an illicit transfer of benefits.

Our Findings

2. HD's Estate Management Division Instructions ("the Instructions") stipulate that a DC member may lease one ward office in a public housing estate. A DC member who is leasing a ward office may still apply for another ward office in another public housing estate and enjoy the same order of priority, provided that he/she signs an undertaking to surrender his/her current ward office within two months from the commencement of tenancy of the new ward office.

3. In addition, DC members are allowed to share tenancy of a ward office. If one of the joint tenants resigns from his/her office or decides to terminate the tenancy, the remaining tenant may continue leasing the ward office until his/her tenure expires if he/she so wishes.

Response from HD

Complaint Point (1)

4. HD clarified that as long as Councillor A signed an undertaking as mentioned in paragraph 2 above, he would be eligible to apply for Office 2.

Complaint Point (2)

5. HD indicated that tenancies for ward offices tie in with the tenures of DC members. Joint tenants have the same rights and obligations under the tenancy agreement. If one tenant terminates the tenancy mid-way, the remaining tenant has the right to stay. As such, upon notification by Councillor A of his intention to move out of Office 1, HD asked Councillor B whether he wished to continue the tenancy. Councillor B replied that he would take up the whole ward office. HD thus allowed him to stay till the end of his tenure. If Councillor B got elected again, HD would renew the tenancy of Office 1 with him directly.

Our Comments

Complaint Point (1)

6. That HD stipulated a notice period of two months for termination of tenancies was not unreasonable. After all, preparations for relocation to a new office took time. Two months should be a reasonable period.

Complaint Point (2)

7. We shared the complainant's view that HD's existing practice might result in unfairness and it smacked of an illicit transfer of benefits.

8. We considered it reasonable for HD to have permitted Councillors A and B to share use of Office 1 for proper use of resources. However, when Councillor A terminated his tenancy, HD should have handled the lease arrangement in accordance with the established mechanism and arranged Office 1 for open application, rather than allowing Councillor B to stay in the name of a joint tenant, or even renewing the tenancy with him if he got re-elected. Otherwise, it would mean allowing DC members to circumvent the existing allocation mechanism and transfer the tenancy to another DC member whom they invited to share use of the premises, resulting in *de facto* "inheritance of tenancy". That was obviously a loophole in HD's allocation mechanism.

9. We understood that HD staff were just following the Instructions. They, therefore, committed no maladministration in this regard. However, the guidelines in the Instructions for handling cases which involved premature termination of tenancy by a joint tenant would indeed give rise to the problem of "inheritance of tenancy".

Conclusion and Recommendations

10. Overall, The Ombudsman considered the complaint partially substantiated.

11. The Ombudsman made the following recommendations to HD:

(1) to review its guidelines and code of practice with regard to the handling of joint applications for ward offices by DC members;

(2) to add a suitable clause to the tenancy agreement stipulating that in case of termination of tenancy by a joint tenant, the remaining tenant had to vacate the office "within an appropriate period of time"; and

(3) to handle properly the leasing arrangements for Office 1 upon expiry of the current tenancy. Open application should be arranged in accordance with established policies and mechanism, as well as the order of priority.

A case of faulty procedures



Housing Department ("HD")

Case No. OMB 2014/5008 – Handling frequent enquiries and complaints

Allegation: failing to properly handle the complainant's enquiries and complaints – unsubstantiated

Details of Complaint

The complainant, a public housing resident, alleged that in the past three years he had repeatedly complained about the nuisance caused by his neighbours burning joss paper in front of their unit. However, HD had failed to take any concrete action to resolve the problem, and had even wrongly sent a reply letter intended for him to the neighbours under complaint. Furthermore, HD staff responded to his enquiries in an evasive and poor manner. Misusing the performance pledge of replying public enquiries within 21 days, they would delay answering simple questions.

Response from HD

2. According to HD's information, in the year of 2014 alone, the complainant had made more than 260 telephone calls to the District Tenancy Management Office ("DTMO"), as well as bombarding different sections under HD, including the offices of the Director, Deputy Director, three Assistant Directors, Regional Chief Manager (Property Management), Chief Executive Officer and Data Controlling Officer, with frequent calls to make enquiries and complaints. Moreover, the complainant often used abusive language in his conversations with HD staff.

3. Regarding the complainant's complaint about his neighbours' burning of joss paper, HD had held meetings with the tenants under complaint, issued advisory letters, and instructed the property services agent to step up patrols. The tenants concerned were cooperative. Since mid-2014, the situation had largely improved and there had been no complaints from other households living on the same floor. HD admitted that it had once put down a wrong recipient's address in the reply letter to the complainant. However, the address on the envelope was correct and the letter was delivered by dropping directly into the complainant's mailbox. A photograph was taken of the delivery for record keeping and it proved that the letter was not wrongly sent to someone else. HD subsequently clarified the matter and apologised to the complainant.

4. While HD staff had mentioned its 21-day performance pledge about making replies, there was no delay in handling the complainant's enquiries. For example, DTMO sent him by email the document on the policy regarding under-occupation households in public rental housing on the same day upon learning of his request. Given the huge amount of enquiries and complaints made by the complainant, HD followed its procedural guidelines and appointed a senior housing manager as the coordinator responsible for giving substantive replies to the complainant for and on behalf of different sections of HD. Apart from maintaining telephone contact with the complainant, the manager also had meetings with him and issued to him a dozen written replies.

Our Comments

5. We considered HD to have properly handled the complaint about joss paper burning in the common areas. Besides, it had not wrongly sent the letter addressed to the complainant to a third party.

6. The complainant had bombarded HD with extremely frequent enquiries and complaints. After examining HD's procedural guidelines on handling public complaints and the many reply letters issued to the complainant, we considered HD to have responded to the various issues raised by the complainant in an appropriate manner.

7. The numerous telephone calls and frivolous enquiries made by the complainant to different HD offices, together with his hostile attitude, had not only strained the Department's resources, but also caused unnecessary stress and anxiety to the staff and ultimately affected the operations of HD. The complainant's behaviour was indeed unreasonable.

Conclusion and Recommendations

8. We found no evidence of maladministration on the part of HD. The complaint, therefore, was unsubstantiated.

9. The Ombudsman recommended that HD:

(1) strengthen training for frontline staff to enhance their ability in effectively responding to different forms of unreasonable complainant behaviour; and

(2) draw up proper guidelines and instructions for staff, and provide them with the necessary support.

Summaries of Selected Cases Concluded by Full Investigation



Housing Department ("HD")

Case No. OMB 2015/1633 – Public housing form and Customer Service Centre

Main allegations: (1) unclear instructions in the Amendment Form – substantiated; and (2) officer unreasonably refusing to meet the complainant immediately to handle his complaint – unsubstantiated

Details of Complaint

The complainant visited HD's Customer Service Centre to hand in an Amendment Form for his friend who was applying for public rental housing ("PRH"). To his dismay, the receptionist told him that the applicant was also required to provide a written statement regarding addition or deletion of family members. The complainant was dissatisfied that such a requirement was never mentioned in the Amendment Form, and the statement was not available for download from HD's website either. He reckoned that such an omission would inevitably prolong the PRH application process.

2. The complainant alleged that he immediately requested an interview with HD's duty officer to lodge a complaint. After waiting for one hour, he was told that he should first obtain a tag and wait for his turn. He then called the police for assistance. However, the duty officer still refused to meet him straight away, and insisted that he should get a tag first.

Response from HD

Allegation (1)

3. Given that PRH applicants may add or delete family members for various reasons, HD considered it more appropriate to check their submitted Amendment Forms first before informing them of the specific supporting documents and statements that they would need to provide. Nevertheless, HD admitted that the form could be improved, particularly by inserting a remark at the section "Addition of Family Member" to indicate the requirement of a relevant statement. HD was reviewing the content of the form and would make corresponding amendments in due course.

Allegation (2)

4. The Customer Service Centre has a large number of visitors every day, with around 200 of them seeking an interview for making enquiries, expressing opinions or lodging complaints. To maintain an orderly process, an electronic queuing system is installed at the lobby to issue tags to visitors, so that they can be received by HD officers in sequence.

5. According to HD records, upon learning the complainant's intention to lodge a complaint, the receptionist immediately told him that he needed to first obtain a tag before he could have a meeting with HD's duty officer. Since the complainant refused to comply, a manager from the property management contractor was called to the scene around 20 minutes later to explain the queuing arrangement to the complainant again. The manager also suggested that if the complainant could not wait, he might leave his contact information for HD officers to call him back, or express his opinions by calling the Department's hotline or using its postage-free complaint form, but all those options were rejected by the complainant. Eventually, the complainant called the police for assistance and left the Customer Service Centre voluntarily after mediation by the police.

Our Comments

Allegation (1)

6. We considered the Amendment Form indeed lacking in clarity. While it noted under the section "Deletion of Family Member" that a written statement should be attached to the form, no similar instructions were found under "Addition of Family Member". This could create a wrong impression that no statement would be required in the latter situation.

Allegation (2)

7. Since the Customer Service Centre receives a large number of visitors every day, for efficient use of resources and fairness to all waiting visitors, it is reasonable for HD officers to require the complainant to follow established procedures in obtaining a tag and waiting to be interviewed. As regards the complainant's allegation that he had been kept waiting for an hour without being told to get a tag first, we could not ascertain what actually happened when the complainant's account of the incident was different from that given by HD officers.

Conclusion and Recommendation

8. The Ombudsman considered allegation (1) substantiated and allegation (2) unsubstantiated. Overall, this complaint was partially substantiated.

9. We recommended that HD complete reviewing and revising the Amendment Form as soon as possible and make it available to all PRH applicants.

A case of unclear instructions in public housing form



Lands Department ("Lands D") and Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2015/3144A&B – Responsibility for land control

Allegation:
Lands D – failing to follow up on a complaint about illegal structures on a beach, as a result of which the structures continued to exist – unsubstantiated

LCSD – same – unsubstantiated

Details of Complaint

Back in August 2012, the complainant complained to the District Office about some illegal structures erected on a beach by some barbecue site operators. The case was referred to Lands D and LCSD for action. However, both departments denied responsibility for managing the area in question ("the Area"). As at November 2014, the two departments were still deliberating the issue. The complainant thus lodged a complaint with this Office against them for failing to follow up on his complaint, as a result of which the structures continued to exist.

Our Findings

2. We noted that since 2003, Lands D and LCSD had been discussing the question of management responsibility for the Area but no consensus was reached. Lands D insisted that the management

responsibility for the Area should rest with LCSD because the records showed that the Area had been allocated to the then Urban Services Department (the predecessor of LCSD) decades ago. However, LCSD argued that the land allocation process was incomplete and so the management responsibility for the Area should rest with Lands D, which is responsible for managing all unallocated Government land.

3. The result was that no enforcement action against the illegal structures had been taken by either department.

4. LCSD further explained that even if the Area had been allocated to it, it could not have taken enforcement action as it had no such statutory authority. Subsequently, Lands D indicated that it was prepared to delegate its relevant statutory power to LCSD for tackling the problem.

Our Comments

5. The crux of the matter was that Lands D does not have management responsibility for allocated Government land while LCSD all along had no statutory power to take enforcement action against the illegal structures in the Area. Both departments had had a valid reason not to take enforcement action.

Conclusion and Recommendation

6. In this light, The Ombudsman considered the complaint against Lands D and LCSD unsubstantiated.

7. However, the Area had been unlawfully occupied for more than ten years, which was breeding contempt for the Government's enforcement authority. The Ombudsman, therefore, recommended that Lands D and LCSD take the matter to higher authorities in the Government for a pragmatic solution to the problem as soon as possible.

A case of unclear enforcement responsibility



Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2015/1410 – Photography in public library

Allegation: unreasonably prohibiting the complainant from taking photographs of reference materials in a library – unsubstantiated

Details of Complaint

When reading some reference books in a public library under LCSD, the complainant used his smart phone to photograph a few pages for his academic research. However, the staff stopped him on the grounds that photography is not allowed in the library, and advised him to use the photocopiers in the library or copy the information by hand.

2. The complainant alleged that LCSD's regulation was unreasonable, because he had not caused any nuisance to other readers in photographing the materials, nor was he in breach of the Copyright Ordinance ("CO"). Moreover, taking photographs was a more efficient and environmentally friendly way of reproduction of materials than photocopying or hand copying.

Response from LCSD

3. According to the Libraries Regulation ("LR"), no person shall "expose any film in a library" except with the permission of the librarian (section 42(d)); and no person shall wilfully obstruct or disturb any other person in the use of a library (section 43).

4. LCSD stated that it had received numerous complaints from readers alleging that they were disturbed by someone taking photographs in the library, and they were also worried about intrusion of privacy. Therefore, LCSD has posted "no photography" signs in all public libraries, and will stop any photography activities to prevent disturbance to other readers pursuant to section 43 of the LR.

5. Besides, LCSD has a duty to remind readers of compliance with the CO in reproducing reference materials. By providing photocopiers in the library, LCSD can have its staff monitor the reproduction of materials by readers. If readers were allowed to freely use their own smart phones to take photographs, it would be difficult for LCSD to check what materials they have reproduced and the amount involved, and thus impossible to control any act of copyright infringement.

Our Comments

6. The complainant argued that taking photographs of just a few pages would not cause nuisance or violate the CO. While we accepted that his argument might stand in isolated cases, we should note that LCSD staff cannot possibly ascertain the intent of each and every reader, nor are they empowered to inspect the data stored in readers' smart phones or photographic devices. They have no means to ensure that all readers will only photograph a small portion of materials, and will not transmit the data via their smart phones. Therefore, we considered LCSD reasonable in imposing a ban across the board on photography in public libraries for effective control of nuisance or copyright infringement behaviour.

7. We noticed that the wording in section 42(d) of the LR seemed to cover only film photography. As the legislation was enacted years ago, equipment for photographing without films, such as smart phones or digital cameras, was non-existent then. We urged LCSD to keep abreast with modern technology and consider amending the relevant provision.

Conclusion and Recommendation

8. In the light of the above, The Ombudsman considered this complaint unsubstantiated.

9. We recommended that LCSD review and consider amending the LR as soon as possible to provide a more solid legal basis for prohibiting photography in public libraries.

A case pointing to the need to keep abreast of the times



Mandatory Provident Fund Schemes Authority ("MPFA")

Case No. OMB 2014/4847(R) – Record of telephone conversation

Main allegation: unreasonably insisting on providing only in transcript form the record of a telephone conversation – substantiated

Details of Complaint

The complainant had lodged a complaint with MPFA against a Mandatory Provident Fund trustee. Later, invoking MPFA's own Code on Access to Information, he asked for an audio recording of a telephone conversation between him and MPFA staff. MPFA replied that the record of the telephone conversation would have to be provided in the form of transcript, for which a fee of $240 for every six minutes of the conversation would be charged.

2. The complainant considered that MPFA was trying to discourage him from requesting a record of the telephone conversation by charging him such a high fee.

MPFA's Explanation

3. MPFA explained to us that the requested audio recording would reveal the names and posts of two MPFA officers, which are "third party personal data" protected by the Personal Data (Privacy) Ordinance ("PDPO"). MPFA, therefore, must obtain the consent of the two officers before the requested recording could be released.

4. MPFA added that its offer of providing a record of the telephone conversation in transcript form was for easy redaction of the above-mentioned personal data. MPFA did not rule out the possibility of providing the record in other forms (such as audio recording). Nevertheless, MPFA admitted that it had mistakenly stated to the complainant that the record of the telephone conversation would have to be provided in the form of transcript.

Our Comments

5. First and foremost, we consider it unnecessary for MPFA to worry about unlawful disclosure of the aforementioned "third party personal data". The names and posts of the two officers concerned in fact were open information for identifying them as public officers, which should be distinguished from information relating to their private life. It was clear that the purpose of such disclosure was directly related to the purpose for which the information was to be used at the time of its collection; under PDPO, such disclosure would not constitute a contravention of the Data Protection Principles.

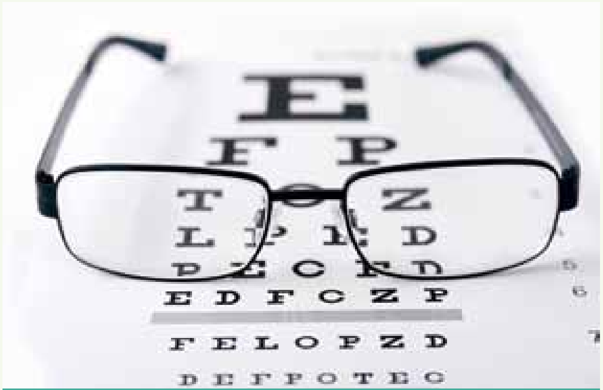
6. Moreover, what the complainant was asking for was an audio recording, not a transcript that would cost much more. MPFA should have given the complainant all the options, rather than maintaining that the record of the telephone conversation would have to be provided in the form of transcript. It was natural that the complainant thought that he had not been given a choice and MPFA had been trying to discourage him from requesting a record of the telephone conversation by charging him an exorbitant fee. Not until after our intervention did MPFA offer him the option of audio recording, which should have been done right from the outset.

Conclusion and Recommendations

7. In view of the above, The Ombudsman considered the complaint substantiated.

8. The Ombudsman urged MPFA to instruct its staff to clearly apprise information requestors of all possible forms of provision of information, in order that similar misunderstandings could be avoided in future.

A case of misinterpretation of the law causing inconvenience



Marine Department ("MD")

Case No. OMB 2015/0433 – Replacement of vessel operator licence

Allegation: unreasonably requiring a licence holder to provide an eyesight test certificate when applying for a replacement of his lost licence – substantiated

Details of Complaint

The complainant had lost his Pleasure Vessel Operator Certificate of Competency ("the licence") issued by MD. When he applied for a replacement licence, MD required him to provide an eyesight test certificate issued by a registered medical practitioner or optometrist within 12 months preceding the application. The complainant considered MD's requirement unreasonable given that his licence was still valid.

Response from MD

2. To ensure maritime safety, MD requires vessel operators to meet certain eyesight standards. In the Examination Rules on licence application, it was stipulated that all applicants for new issue, replacement and extension of licences were required to provide a valid eyesight test certificate. Once issued, the licence would remain valid until the holder reaches the age of 65.

Summaries of Selected Cases Concluded by Full Investigation

Our Comments and Conclusion

3. MD was just following the Examination Rules in requiring the complainant to provide an eyesight test certificate. However, The Ombudsman considered the requirement unreasonable and unfair. In our view, if MD considered it necessary for licence holders to take the eyesight test at regular intervals, it should impose the same condition on all licence holders, rather than merely requiring those who had lost their licences to be tested. Alternatively, if MD considered it not necessary for licence holders to undergo any further eyesight tests until the age of 65, then it should not especially ask those who applied for a replacement to do the test.

4. The Ombudsman, therefore, considered the complaint substantiated.

Subsequent Development

5. MD reviewed the relevant requirements under the Examination Rules and agreed that it was undesirable to require licence holders to provide an eyesight test certificate when applying for a replacement licence. After consultation with the industry, MD revised the relevant requirements. The revisions to the Examination Rules were gazetted and became effective in May 2015. Since then, licence holders applying for a replacement licence are no longer required to provide an eyesight test certificate.

A case of improper rules



Post Office ("PO")

Case Nos. OMB 2015/1157; OMB 2015/1245; OMB 2015/1681; OMB 2015/1708 and others – Handling compensation claims

Allegation: mishandling compensation claims for lost mail items – unsubstantiated

Details of Complaint

The complainant was the authorised representative of six companies in a total of 27 complaints lodged with this Office against PO for mishandling their compensation claims.

2. The complainant claimed that all the six companies had sent packets to overseas destinations by registered mail but some were not delivered to the addressees. After investigation, PO replied that those packets could not be located. The complainant alleged that PO's handling of their compensation claims was unsatisfactory, such as giving him inconsistent replies about what supplementary information was required to support their claims. Moreover, instead of advising him to submit all the necessary documents in one go, PO made separate requests for supporting documents, including invoices, details of the suppliers and the claimants' Business Registration Certificates ("BRCs"). Eventually, PO even refused to compensate without giving any reason.

Response from PO

3. PO processes compensation claims in accordance with the regulations of the Universal Postal Union. If outbound mail items are lost, the destination postal administrations will be responsible for the compensation. A maximum sum of $320 will be paid for the value of the items sent by post, plus a refund of all postage paid (with the exception of the registration fee).

4. To prevent any abuse of the compensation mechanism, PO started amending the Post Office Guide from April 2015 to tighten the regulations on compensation. Since then, claimants are required to produce the Certificate of Posting, a valid invoice to prove the value of the mail item(s), and the BRC (where the claimant is a company). If PO considers the information provided inadequate or dubious, it will ask for further supporting documents or a written declaration from the claimant, or even reject the compensation claim.

5. Regarding the compensation claims arising from the 27 complaint cases represented by the complainant, since PO considered the claimants' written declarations inadequate to support their claims, it sought the invoices from them. However, the invoices submitted by the claimants did not contain such details as the suppliers' addresses and telephone numbers and the company names as shown on the BRCs did not entirely match those of the claimants, so PO asked the claimants for additional information. As the additional information provided by the claimants was still insufficient to prove the validity of the invoices, PO decided not to pay any compensation. As regards the allegation of giving inconsistent replies, PO was unable to trace the relevant records because the complainant could not provide such information as the date of conversation, the name of the staff concerned or the enquiry case number.

Our Comments

6. PO has the duty to assess each compensation claim carefully. Although some of the six companies' claims were made before the amendment of the Post Office Guide, when the then prevailing regulations only required the submission of a Reply Slip and a declaration without the need of any supporting documents, both the old and new versions of the Post Office Guide specified that the compensation paid would not exceed "the value shown in the purchase invoice of the articles lost". The new version merely elaborates on the information that should be shown on the invoice and so should not be regarded as changing the assessment criteria. We considered it sensible and reasonable for PO to seek more corroborative information from the claimants as the situation developed in order to ensure the authenticity of the invoices.

7. The complainant alleged that PO staff had given him inconsistent replies, but PO was unable to trace the audio records in question because he could not provide further details such as the dates of the telephone calls. At any rate, PO staff had explained to him the claim procedures time and again, so he should have known what further information was required. PO rejected the compensation claims on the grounds that the information submitted did not meet PO's requirements, and stated the reasons in its written replies. We did not find any impropriety on the part of PO from the perspective of administration. As to whether the compensation claims were fully justified and ought to be approved, those were issues subject to PO's judgement and we would not intervene.

8. We noted that in the past, PO seldom requested claimants to provide supporting documents or rigorously checked their claims. Such practice was indeed too lax and could hardly fulfil the duty entrusted to it by overseas postal administrations. We were pleased that PO had taken remedial measures to tighten its application procedures for compensation claims and plug any loopholes in the mechanism.

Conclusion and Recommendations

9. In the light of the above, The Ombudsman considered the 27 complaints unsubstantiated.

10. The Ombudsman recommended that PO:

(1) review periodically the effectiveness of its procedures for handling mail enquiries and compensation claims, and further amend those procedures and relevant guidelines where necessary;

(2) remind its frontline staff to be vigilant and make an effort to detect suspected abuse cases as early as possible;

(3) establish a clear reporting mechanism for timely reports by frontline staff of suspected abuse cases to their supervisors;

(4) actively collect evidence on suspected abuse cases, and refer those cases with sufficient evidence to law enforcement agencies for further action; and

(5) strengthen its communication with overseas postal administrations and exchange views with them on how to improve the procedures for handling mail enquiries and compensation claims.



Post Office ("PO")

Case No. OMB 2015/2363 – PO Box renewal

Allegations: (1) mishandling the complainant's cheque for renewing his PO Box – substantiated; (2) failing to give notice before closing his PO Box – partially substantiated; and (3) refusing the complainant's request for access to relevant records – substantiated

Details of Complaint

In December 2013, the complainant sent PO a cheque to pay the renewal fee for his private PO Box, the rental period of which would expire in March 2014. To his surprise, he subsequently discovered that his PO Box had been closed. PO denied having received his cheque, and also claimed that it had sent him a reminder by recorded delivery before closing his PO Box. The complainant requested PO to show him the mail delivery notification card ("notification card") of his PO Box to prove delivery of the reminder, but the staff refused his request on the grounds that the notification card was an "internal document".

2. The complainant, therefore, lodged a complaint with this Office against PO for mishandling his cheque, failing to follow proper procedures in giving him notice before closing his PO Box, and unreasonably withholding the relevant records. He also provided a photocopy of his cheque and the bank's transaction records to show that PO had already cashed the cheque in question.

Our Findings

Allegation (1)

3. In general, renewal notices are issued to PO Box renters two months before the end date of the current rental period. If a payment cheque is received with the renewal notice attached, PO staff will renew the rental period by scanning the barcode printed on the notice and inputting the cheque number into PO's computer system. However, since the complainant issued the cheque to PO earlier than usual and no renewal notice had yet been issued at that time, he wrote down his PO Box and account numbers on the reverse side of his cheque. Upon receiving the cheque, PO staff wrongly credited the payment to the account of another renter, whose PO Box was due to expire very soon. PO did not discover the mistake until after the complainant had provided a photocopy of the cheque for it to check its accounts.

Allegation (2)

4. In February 2014, PO issued a reminder to the complainant in duplicate, which were sent by recorded delivery to his residential address and PO Box respectively. Records showed that the postman had tried but failed to deliver the reminder to his residential address as no one answered the door. For the reminder sent to his PO Box, according to normal procedures, when the registered reminder reached the post office by bulk mail despatch, the staff should inform him to collect the mail item by inserting into his PO Box a notification card stamped with the day's date. PO subsequently retrieved the notification card for his PO Box but found that no such date was stamped on it. After investigation, PO was unable to ascertain whether the staff had not inserted the card into his PO Box, or had done so but failed to stamp on it the date. Eventually, both copies of the reminder remained uncollected after the prescribed period and were returned to the sender.

Allegation (3)

5. The staff of the post office concerned had no recollection about the complainant's request for access to the notification card. At any rate, PO admitted that the complainant should have been allowed to see the notification card of his PO Box, and reminded all staff to comply with the Code on Access to Information and give assistance to customers as far as possible.

PO's Improvement Measures

6. PO apologised to the complainant for the mistakes committed in this case. PO has cautioned and provided guidance to the staff who mishandled the cheque, and has also enhanced its computer system and handling procedures for better management of the payment records in respect of PO Box renewals. Moreover, PO has ceased the practice of despatching a bulk mail containing a number of reminders intended for different box renters at the same post office. Instead, the reminders will be sent separately by recorded delivery so that PO can accurately track their individual status.

Our Comments and Conclusion

7. We considered PO to have indeed mishandled the complainant's cheque, and its procedures for processing renters' payment of PO Box renewal fees by posting cheques inadequate. Although PO had issued a reminder to the complainant before closing his PO Box, it had failed to insert the notification card stamped with the proper date into his PO Box, and the copy sent to his residential address was not successfully delivered either. As a result, the complainant had not been duly notified. We also believed that in his effort to collect evidence to support allegation (2), the complainant had requested to check the notification card but was refused by the staff.

8. In the light of the above, we considered allegations (1) and (3) substantiated, while allegation (2) partially substantiated. Overall, The Ombudsman considered this complaint substantiated.

Recommendations

9. The Ombudsman recommended that PO:

(1) instruct the supervisory officers of all post offices to monitor whether mail items pending collection by PO Box renters have been handled in accordance with relevant guidelines;

(2) review in a timely manner whether its improvement measures are effective in preventing similar problems from recurring; and

(3) remind all frontline staff to consult their supervisors or the Access to Information Officer if they have any doubts in handling the public's requests for information.

A case of staff negligence and failure to follow procedures



Privacy Commissioner for Personal Data ("PCPD")

Case No. OMB 2015/0922 – Delay in complaint handling

Main allegation: delay in handling a complaint relating to data access – partially substantiated

Details of Complaint

In February 2013, the complainant complained to the Office of PCPD against her doctor for allegedly refusing her data access request for copies of her medical records. PCPD accepted her complaint as a "complaint" on 1 August and told her that she would be notified before 15 September (i.e. within 45 days) if PCPD decided not to investigate her complaint. However, it was not until late July 2014 that PCPD informed her of such a decision.

2. The complainant subsequently complained to this Office against PCPD for delay in handling her complaint.

Our Findings

3. According to PCPD's Complaint Handling Policy, a complainant should produce sufficient information in support of his allegation(s) in order that his complaint can satisfy the requirements of a "complaint" under the Personal Data (Privacy) Ordinance ("PDPO"). PCPD will enquire of the complainant in order to understand the complaint details and confirm his allegation(s).

4. PCPD may exercise discretion to refuse to carry out, or to decide to terminate an investigation. Section 39(3) of PDPO stipulates that PCPD shall in no later than 45 days after receiving the complaint inform the complainant in writing of the refusal and the reasons for refusal.

PCPD's Explanation

5. Between mid-March 2013 and mid-July 2014, the complainant sent in at different times voluminous documents totalling over 300 pages to revise/clarify her allegations or add new ones, and to provide further information on her case. Officers of PCPD, therefore, needed considerable time to digest the materials and grasp the full picture of the case. Meanwhile, they contacted the complainant to discuss her case and inform her of case progress by way of 20 telephone calls and eight letters in total. After a number of discussions with the complainant and communications with the doctor concerned, PCPD informed the complainant on 29 July 2014 of its decision not to investigate her complaint because there was no actual information in support of or to prove that the doctor had the documents she claimed to be outstanding and had withheld them from her. Later on, PCPD informed her of her right of appeal under PDPO.

6. While contravention of PDPO is a criminal offence, PCPD found it not possible to achieve absolute compliance with its requirement on response time as set out in section 39(3). Complaints should be handled carefully and the party being complained against given equal opportunity and ample time to clarify and respond to the allegation(s). Besides, PCPD also needs sufficient time to obtain information from different parties for reaching a fair and objective judgement. It may not work to the benefit of the complainant or the party under complaint if PCPD adheres strictly to a rigid timetable in processing a complaint. As such, PCPD found it necessary to remove the requirement altogether from PDPO. It had made a submission to the Government, which agreed to work on the necessary legislative amendment.

Our Comments

7. We accepted that PCPD had in fact been in constant dialogue with the complainant whose continual supply of information might well have protracted PCPD's processing of her case. Nevertheless, taking a year just to inform the complainant of its decision not to pursue her complaint was long by any reasonable standard and a far cry from the statutory time limit of 45 days.

Conclusion and Recommendations

8. The Ombudsman, therefore, considered the allegation partially substantiated.

9. The Ombudsman recommended that PCPD closely follow up on the issue of legislative amendment with the Government. Before the proposed amendment was effected, PCPD should use its best endeavours to comply with the 45-day requirement.



Transport Department ("TD")

Case No. OMB 2015/0280 – Car testing centres

Allegation: ineffective monitoring over the operations of car testing centres, thereby making it difficult for vehicle owners to book vehicle examination before expiry of licences – unsubstantiated

Details of Complaint

The complainant needed to comply with Government requirements and have his private car examined annually by TD's designated car testing centres ("DCTCs"). He tried to make an appointment with the DCTCs three weeks before expiry of the vehicle licence, but was told that the earliest available time slot would be more than a month later. Consequently, his vehicle licence could not be renewed before the expiry date. He was dissatisfied that TD had failed to ensure that adequate services were provided by the DCTCs, resulting in inconvenience to vehicle owners.

Our Findings

Response from TD

2. TD requires private cars aged six years or more and light goods vehicles aged one year or more to pass an annual examination before licence renewal. Vehicle owners may make appointments for examination within four months prior to expiry of their vehicle licences. Currently, there are 22 DCTCs in Hong Kong with an annual testing capacity of around 400,000 vehicles, which in principle should be sufficient to process around 310,000 vehicles required to undergo annual examination every year.

3. TD pointed out that while in the past vehicle owners could generally have their vehicles tested within one to three weeks after booking an appointment, the average time required has become significantly longer since the second half of 2014. The main causes were as follows:

(1) Multiple and invalid appointments: Since the walk-in quota arrangement was cancelled in January 2015, some vehicle owners made multiple appointments with different DCTCs as they were uncertain when their vehicles would be delivered for examination. So, some of the time slots were being wasted. Some other owners tried to book with vehicles not yet due for examination, the time slot would then be taken up by some other vehicles due for examination. However, if there were no vehicle due for examination, the owners concerned simply did not show up for their appointments. TD's statistics showed that around 20% of the appointments in April and May 2015 were either duplicated or invalid.

(2) Increased demand for vehicle examinations: As the number of private cars was on the rise, together with the higher failure rates at first examination recorded in 2013 and 2014, there was a 5% increase in the total number of vehicles tested in each of those two years.

(3) Peak period for vehicle examinations: The usual peak period for vehicle examinations is towards year end up to the Lunar New Year period, which shows a 10% to 20% increase in demand. During the peak period, it usually takes eight to ten weeks to obtain an appointment.

Improvement Measures

4. In response to the above situations, TD initiated a number of improvement measures:

(1) Reducing multiple and invalid appointments: TD has computerised and linked up the booking systems of all DCTCs. When receiving a booking request, DCTCs are required to verify the vehicle information and reject any duplicate booking and any vehicle with licence not due to expire within four months. Once a booking is confirmed, the vehicle registration number cannot be changed afterwards. The system also enables the public to check the appointment status of all the 22 DCTCs online.

(2) Extended service hours and increasing the number of DCTCs: Starting from March 2015, TD has arranged for three DCTCs to extend their services to Sunday on a trial basis. Moreover, six DCTCs will operate longer hours on normal working days, while two will extend their services to Saturday. TD would continue extending the service hours of existing DCTCs as far as resources permit. The Department has also invited operators to set up new centres.

(3) Advising vehicle owners to make early arrangements for vehicle examinations: TD has reminded vehicle owners to make advance appointments for examination through various publicity measures, such as disseminating the information through its website, posting notices and posters and distributing flyers.

Conclusion and Recommendations

5. Overall, we found TD to have made detailed analysis on the causes of longer time required for scheduling vehicle examinations and adopted improvement measures to tackle the problem effectively. The Ombudsman, therefore, considered the complaint unsubstantiated.

6. Nevertheless, our investigator called all the 22 DCTCs in June 2015 to make vehicle examination appointments and found that eight centres still accepted duplicate bookings. Apparently, the verification procedures mentioned in paragraph 4(1) above were not stringently implemented by all DCTCs.

7. The Ombudsman made a number of recommendations to TD, including mainly:

(1) to review the results of extending the service hours of DCTCs, and encourage more centres to follow suit if the trial scheme is proved to be effective;

(2) to step up monitoring of all DCTCs to ensure that the verification procedures are stringently implemented to prevent multiple or invalid appointments;

(3) to enhance the online and telephone services for checking of appointment status, and provide an online platform for the public to make appointments for vehicle examinations as soon as possible;

(4) to formulate contingency measures for the peak period; and

(5) to complete the tendering and vetting procedures for setting up new DCTCs as soon as possible.

Summary of Selected Cases on Code on Access to Information

(The summaries of selected cases in this Annex cover the main allegations and related conclusion of those complaints. For details of the overall conclusion and number of recommendations, please refer to Annex 7)

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)



Development Bureau ("DEVB")

Case No. OMB 2015/3186(I) – Withholding of information

Allegation: refusing to disclose the list of Civil Servants' Cooperative Building Society ("CBS") sites with redevelopment potential – substantiated

Details of Complaint

In a discussion paper submitted by DEVB to the Legislative Council Panel on Development in May 2015, it was mentioned that 85 CBS sites out of a total of 178 were estimated to have redevelopment potential. The complainant was dissatisfied with DEVB's refusal to provide her with the list of those CBS sites ("the List").

DEVB's Explanation

2. DEVB considered its refusal justified by two provisions under the Code on Access to Information ("the Code").

3. Paragraph 2.13(a) of the Code provides that Government departments may refuse an information request if it is related to "incomplete analysis, research or statistics". While the List was derived from an already completed research, the Government had concluded that the aggregate additional floor area that could be yielded from redeveloping the 85 CBS sites was limited and did not warrant the Government's facilitation of their redevelopment. DEVB was worried that disclosure of the List would cause public misunderstanding about the redevelopment potential of CBS sites. The Bureau maintained that the misunderstanding potentially caused by disclosure of the List was what paragraph 2.13(a) of the Code in spirit intends to avoid.

4. DEVB also argued that it had advised the complainant on methods to identify those 85 CBS sites from public information sources, e.g. working out the redevelopment ratio of each and every CBS site in Hong Kong from available information such as Outline Zoning Plans, which stipulate the development restrictions on each site. Such information sources are "information which is already published" as referred to in paragraph 1.14 of the Code. Accordingly, DEVB did not have to provide the complainant with any other relevant information.

Our Comments

5. It is our view that both the letter and the spirit of paragraph 2.13(a) of the Code are clearly just to protect information relating to "incomplete analysis, research or statistics" and to avoid public misunderstanding potentially caused by disclosure of such kinds of information. Since the research through which the 85 CBS sites were identified had already been completed, there was no basis for DEVB to cite that paragraph of the Code to refuse the complainant's information request. The Bureau's concern about potential misunderstanding was unnecessary, because it had already explained to the complainant the context in which those 85 CBS sites were identified.

6. Neither did we accept paragraph 1.14 of the Code as a valid reason for refusing the complainant's information request. The List itself was clearly not "information which is already published". Even if the complainant could eventually arrive at the List by checking the development restrictions of all CBS sites in Hong Kong as suggested by DEVB, that would be undue hardship put on her. This goes against the letter and spirit of the Code that departments should provide the public with information they hold unless there is valid reason under the Code to withhold it.

Conclusion and Recommendation

7. The Ombudsman considered this complaint substantiated.

8. The Ombudsman urged DEVB to disclose the List to the complainant as soon as possible.

A case of unreasonable withholding of information



Housing Department ("HD")

Case No. OMB 2015/0942(I) – Refusal to release information relating to an insurance claim

Allegation: refusing the complainant's request for information relating to a claim for compensation on the grounds of "internal documents" – substantiated

Details of Complaint

In early March 2014, the complainant allegedly sustained an injury from a slip in the shopping mall of a public housing estate. He lodged a claim for compensation with HD and asked the Department to provide the management records and documents of the mall (such as the management log and cleaners' reports), CCTV footage and CCTV maintenance records, and the guidelines of the property management agency ("PMA") on accident handling (collectively referred to as "the records"). Nevertheless, HD refused his request on the grounds of "internal documents".

Sequence of Events

2. HD indicated that it first received in late March 2014 the complainant's written request to check the CCTV footage at the time of the accident. However, because of a technical fault with the hard drive, the CCTV system failed to capture the images of certain periods at some locations (including when and where the complainant allegedly slipped).

3. In early April, the PMA referred the complainant's case to the loss adjuster of the public liability insurer of the Hong Kong Housing Authority ("HKHA") for investigation. The complainant wrote to HD on 3 June to enquire about case progress and request HD to provide the records. HD replied on 24 June that the matter had been referred to the loss adjuster. In early July, the loss adjuster reverted to the complainant, asserting that neither the PMA nor HKHA should be held responsible for the incident. Compensation to the complainant was therefore not recommended.

4. Aggrieved, the complainant wrote to HD on 26 September to seek a review of his case and ask for the records again. On 10 December, HD issued a reply to the complainant, stating that the records were "all internal documents" and so could not be released to him. Meanwhile, the loss adjuster maintained its original decision upon review of his case.

Response from HD

Reasons for Refusal to Release Information

5. HD pointed out that the complainant's case involved a claim for compensation. Departmental guidelines and the insurance policy HKHA signed with its insurer stipulated that HKHA must obtain the written consent of the insurer and/or loss adjuster before disclosing any information or documents to a claimant. HD refused the complainant's request for information only after consulting the loss adjuster, which recommended against disclosing the records as the complainant's claim might turn into a lawsuit. Moreover, HD considered that the documents could not be disclosed for security reasons and the third party privacy involved.

6. However, upon our enquiry, HD invoked paragraph 2.6(c) of the Code on Access to Information ("the Code") as the reason for refusing to provide the records. According to that provision, a department may refuse to disclose "information which relates to investigations which resulted in or may have resulted in proceedings". HD explained that "internal documents" was cited as the reason in its reply to the complainant after having considered the Code and expert opinions. Furthermore, the Department had to handle the complainant's case as a claim for compensation, and protect HKHA's interest within the framework of the insurance contract. It was not unreasonable to generalise the records as "internal documents".

Target Response Time and Information on Channels of Review and Complaint

7. It took time to seek the advice of its insurer/ loss adjuster and communicate with the complainant. HD stated that its reply on 24 June in response to the complainant's letter was within the target response time as set out in the Code.

8. When the complainant wrote to HD on 26 September to express his dissatisfaction with the assessment result, the 60-day time limit for review set by the loss adjuster had lapsed. HD officers nonetheless asked the loss adjuster to conduct a review and informed the complainant about case progress and the result of the review in early December. While denying that its officers were not conversant with the Code's target response time, HD conceded that it would be better if they had included in the reply details of the reason for refusing to disclose information as well as the channels of review and complaint.

Our Observations and Comments

Refusal to Release Information Not Well-justified

9. We had read carefully the information requested by the complainant and found that although some of them might be related to the complainant's accident, a large part of them was actually general information about the management practice and procedures for the mall (such as operation manual and tender requirements of the PMA) that the general public

could ask to access. HD viewed them as information relating to a claim for compensation simply because the complainant was filing such a claim. This violated the spirit of the Code and was not well-justified. It might impress as an act of withholding the truth in an attempt to avoid responsibility.

10. In fact, we had published in 2009 a direct investigation report on HD's handling of complaints involving claims and pointed out that it was inappropriate and inadequate of HD to just rely on the loss adjuster's investigation. HD must conduct its own parallel investigation to delve into the root cause(s) of complaints. The Department should also accommodate claimants' request for information and assistance so that the loss adjuster could arrive at a well-grounded conclusion. In this case, HD was being unfair to the complainant by refusing to provide him with the records solely on the advice of the insurer/loss adjuster. Its response also showed that it had slipped back into its old ways and failed to rectify the maladministration found years ago.

11. Besides, HD failed to comply with the Code and invoke the relevant paragraphs to explain its refusal to disclose the information. The Department cited security and third party privacy as the reason for non-disclosure. Yet, these were not reasons mentioned in paragraph 2.6(c) of the Code. On the other hand, the relevant CCTV footage had already been damaged and was in no way available. HD could have explained the situation to the complainant. It should not have refused the complainant's request simply on the grounds of "internal documents".

"Internal Documents" Not a Reason for Refusal under the Code

12. HD insisted that calling the records "internal documents" was not unreasonable. However, "internal documents" is not a reason for refusing to disclose information under the Code. This reflected that HD officers were not conversant with the rules and requirements of the Code.

Failure to Meet Target Response Time and Provide Channels of Review and Complaint

13. Paragraph 1.16 of the Code sets out clearly that upon receipt of a request for information, the information must be released or an interim reply issued within 10 days, while a substantive reply must be given within 21 days. HD only replied to the complainant on 10 December in response to his requests for information on 3 June and 26 September. That far exceeded the target response time stipulated. HD staff also failed to provide information on channels of review and complaint in its reply as required by the Code.

Misquoting Conditions in Insurance Policy

14. We noticed that the conditions in the insurance policy made no mention that the insured (i.e. HKHA) could not disclose documents or information. HD had no obligation to consult the opinion of the insurer/loss adjuster before releasing information either. Besides, HD as a Government department has a duty to comply with the Code and uphold the Government's policy of being open and accountable. It should not have followed indiscriminately every advice or recommendation made by commercial establishments such as an insurance company or a loss adjuster.

Improper Maintenance of CCTV System

15. A properly functioning CCTV system is very important to the security of a housing estate and handling of public enquiries and complaints. The CCTV system in the mall had failed to send out a signal to alert the maintenance contractor for it to identify and rectify the problems in time. As such, HD and the contractor had to explore ways to improve the alert function of the CCTV system to avoid recurrence of similar problems in the future.

Conclusion and Recommendations

16. Overall, The Ombudsman considered the complaint substantiated.

17. The Ombudsman recommended that HD:

(1) consider reviewing the complainant's requests one by one and provide him with the information requested, unless there was a reason not to do so as stated in part 2 of the Code;

(2) strengthen staff training and make sure that its officers adhere strictly to the Code; and

(3) explore ways to improve the alert function of the mall's CCTV system such that failure in video recording would not happen again.

A case of failure to comply with the Code



Lands Department ("Lands D")

Case No. OMB 2015/1971(I) – Withholding of information

Allegation: improperly refusing to disclose the name of a Rural Committee Chairman – substantiated

Details of Complaint

A property developer had undertaken to build new fisherman houses for resettling residents affected by a development project in the area where the complainant lived ("the resettlement scheme"). In 2007, Lands D and the developer entered into a supplemental agreement, under which the number of new fisherman houses to be built was to be reduced. In 2013, the complainant made an application under the Code on Access to Information ("the Code"), requesting Lands D to disclose the name of the Rural Committee ("RC") Chairman who had consented to such reduction.

2. The complainant was dissatisfied that Lands D had merely provided him with a copy of the letters from two RC Chairmen indicating that they had no objection to the resettlement scheme, and in one of the letters the Chairman's personal data had been obliterated.

Lands D's Explanation

3. Lands D explained to this Office that in 2006, two RC Chairmen ("Mr A" and "Mr B") had separately issued letters ("Letter 1" and "Letter 2") to the Department to confirm that they had no objection to the sites and area proposed for the resettlement scheme. Lands D thought that as the two letters involved third party information, the Department had to seek the consent of the two Chairmen before releasing them to the complainant.

4. After obtaining Mr A's consent, Lands D provided the complainant with a copy of Letter 1. Nevertheless, Mr B had already passed away. Lands D reckoned that Mr B had issued Letter 2 in a non-official capacity after his tenure as RC Chairman. Since Mr B had not authorised Lands D to release the letter, nor did Mr B's relative agree to providing the complainant with Letter 2, disclosure of such information relating to Mr B might infringe upon the privacy of his relative. Accordingly, based on the reasons stated in paragraphs 2.14(a) and 2.15 of the Code (i.e. third party information and privacy of the individual), Lands D decided to give the complainant a copy of Letter 2 but with Mr B's personal data obliterated.

Our Comments

5. We noted that Mr A had stated in Letter 1 that during his tenure as Chairman from 1995 to 1999, he had raised no objection to the resettlement scheme. However, the fact was that not before 2002 did Lands D decide on the eligibility criteria for accommodation in the new fisherman houses, and that was what led to the reduction in the number of new fisherman houses afterwards. This showed that the reduction proposal had yet to be made during Mr A's tenure as Chairman, and Letter 1 was actually not the information the complainant wanted.

6. As for Letter 2, while it was issued by Mr B after he had left office, he stated in the letter that during his tenure he and the RC had no objection to the resettlement scheme, and he signed the letter in the capacity of former RC Chairman. In other words, Mr B was giving the opinion of the then RC in his official, not private, capacity. Furthermore, since receiving Letter 2 from Mr B, Lands D had not explicitly or implicitly indicated to Mr B that the RC's opinion would not be disclosed. Our view was that Lands D should not have refused to disclose Mr B's name on grounds of "third party information".

7. Moreover, Letter 2 contained no information about Mr B's family status or relatives. We found Lands D's argument far-fetched that disclosure of Letter 2 might infringe upon the privacy of his relative.

8. Lands D should really have provided the complainant with a copy of Letter 2 in full without keeping Mr B's name confidential.

Conclusion and Recommendations

9. In the light of the above, The Ombudsman considered the complaint substantiated.

10. The Ombudsman recommended that Lands D:

(1) provide the complainant with a copy of Letter 2 in full; and

(2) provide training for staff to ensure that they clearly understand and comply with the provisions of the Code.

A case of unreasonable withholding of information

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(1) Guidelines for clarity, consistency or efficiency in operation	
Organisation (Case reference)	**Administrative Enhancement**
Customs and Excise Department (2014/0860)	Guidelines drawn up on disclosure of information under the Trade Descriptions Ordinance
Food and Environmental Hygiene Department (2014/3788)	New guidelines issued to staff specifying the statutory requirements under the law and procedures for protection of wild birds
Food and Environmental Hygiene Department (2014/4438)	Clearer instructions given to frontline staff to ensure necessary tests are conducted when handling complaints about water dripping from air-conditioners
Hospital Authority (2014/0859)	Hospital Authority and the two universities came to consensus on a set of criteria to guide clinicians in determining case complexity to avoid the potential conflict of interest faced by university doctors at the private clinic. A clinical guideline regarding classification of cases devised for implementation in mid-2016
Hospital Authority (2015/2399)	Internal guidelines revised to remind patient relations officers of duty arrangement during their absence or upon their resignation
Housing Department (2013/1118, 2013/1578)	New guidelines regarding the system of allotting banner locations issued
Housing Department (2015/3380)	Guidelines issued reminding staff to keep proper records of all relevant correspondence and actions taken in relation to applications for transfer of housing
Hong Kong Housing Society (2014/1836(R))	A new set of guidelines drawn up and published for better handling of requests for information
Joint Office (Food and Environmental Hygiene Department/ Buildings Department) (2015/3042)	Guidelines issued reminding staff to explain clearly to complainants about the duties and division of work of different departments in handling seepage complaints
Leisure and Cultural Services Department (2012/0709)	Noise level requirements and control measures incorporated into the booking procedures for designated events

Transport Department (2015/0117, 2015/0280)	Guidelines issued to all authorised vehicle examination centres on procedures in making appointments to prevent duplicate or invalid booking
Transport Department (2015/1595)	Guidelines devised regarding enforcement of the requirement on provision of address proof, including the type of documents acceptable as address proof
Water Supplies Department (2014/1644)	Coordinating with Lands Department on how to disseminate the key points of "2002 Agreement" relating to applications for erection of Small Village House

(2) Better arrangements for inter-departmental co-ordination

Organisation (Case reference)	Administrative Enhancement
Lands Department (2015/0901)	Arrangement with the Hong Kong Police Force ("HKPF") re-affirmed for taking immediate action against abandoned vehicles on Government land where the situation causes serious obstruction to traffic or imminent danger to the public and vehicles. District Land Offices would conduct site inspection on receipt of referral cases from HKPF
Transport Department (2014/3539)	Arrangement of printing forms reviewed. Government Logistics Department agreed to print and deliver the annual requirement of forms by two batches every six months, so that any updates/amendments to the forms can be effected in a more timely manner
Transport Department (2015/0162)	Coordinated measures devised for dealing with unauthorised banners in public transport interchanges, with Food and Environmental Hygiene Department exploring the appropriate legal instrument for Transport Department to take enforcement actions

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(3) Measures for better public enquiry/complaint handling	
Organisation (Case reference)	**Administrative Enhancement**
Airport Authority (2013/4752)	Policy on retention and retrieval of CCTV records reviewed and revised for better handling of complaints and reports of incidents of irregularities at the airport
Customs and Excise Department (2014/0860)	New pledges established and published for handling consumer protection complaints
Estate Agents Authority (2012/5437)	• Improvement measures on complaint handling mechanism regularly reviewed to ensure effective implementation; • Guidelines reviewed to strengthen the procedural effectiveness of evidence collection; and • Inclusion of case investigation time as a factor in measuring service performance
Food and Environmental Hygiene Department & Buildings Department (2015/1490A&B)	• Monitoring the performance of out-sourced contractor closely; • Staff reminded to adhere to established guidelines in issuing "Notice of Intended Entry" and "Notice of Intention to Apply for Warrant of Entry"; and • Closely monitoring case progress and keeping the complainant informed
Hospital Authority (2015/2399)	• A "Complaint and Comment Management Electronic System" put in place to improve the efficiency in handling and managing complaints; and • Level of officer to check and sign the interim replies to complainants before issue raised to ensure quality of reply
Home Affairs Department (2014/4795)	Professional and legal advice sought for better handling of requests for inspection of proxy instrument for Owners' Corporation meetings
Hong Kong Police Force (2014/3196(I))	Seminars conducted to enhance the staff's understanding of the requirements of the Code on Access to Information for better handling of information requests from public
Judiciary Administrator (2015/2238)	Handling procedures of incoming letters from the public reviewed and reminders issued for all staff on the need to handle public enquiries in a timely manner

(4) Measures for better client services	
Organisation (Case reference)	**Administrative Enhancement**
Education Bureau (2014/3570A)	Work procedures revised to ensure better handling of applications for registration as teacher and child care worker
Housing Department (2014/5377A)	Clearer information provided on the ballot drawing arrangement for car parking spaces of the housing estate concerned
Joint Office (Food and Environmental Hygiene Department/ Buildings Department) (2015/2555A&B)	Advanced technology, including Infrared Thermography and Microwave Tomography, to detect source of seepage used
Leisure and Cultural Services Department (2014/0901)	Feasibility study on a new computer program to enhance the Leisure Link regarding venue booking completed. Application for funding underway
Post Office (2015/2363)	Internal monitoring enhanced, requiring supervision by senior officers on the handling of registered mail addressed to post office boxes
Transport Department (2015/0117, 2015/0280)	• New vehicle examination centres ("VECs") brought into service, thereby substantially shortening the booking time for vehicle examination; • VECs encouraged to extend their service hours as and when necessary; and • An "Online Vehicle Annual Examination Appointment Booking System" under planning to allow booking of vehicle examinations through GovHK
Transport Department (2015/1595)	• Practice revised to verify addresses that are suspected incorrect with the licence holder direct; and • Remarks put in the database to prevent Transport Department and other departments from using suspected incorrect addresses

(5) Measures for more effective regulation or control	
Organisation (Case reference)	**Administrative Enhancement**
Architectural Services Department (2014/2596)	Staff reminded to formulate suitable maintenance strategy for special flushing system of public toilets
Buildings Department (2013/2794A, 2013/2836A) (topical cases)	Enforcement actions taken in respect of an unauthorised columbarium at a temple and the irregularity rectified
Department of Health (2015/1301)	• Enforcement actions stepped up against smoking offences on ferries; • Ferry operator requested to urge their crew members to ask smokers to extinguish lighted cigarettes, place more "no smoking" signs in prominent locations, and make more frequent "no smoking" broadcast on the ferries; and • Seminar conducted for crew members to familiarise them with the law
Estate Agents Authority (2012/5437)	Evaluation on the criteria for assessment of estate agents' licence renewal conducted
Electrical and Mechanical Services Department (2012/1442)	• Daily checking with the Food and Environmental Hygiene Department on the breakdown reports of the air-conditioning system put in place; and • Reporting mechanism on the breakdown of the air-conditioning system enhanced to expedite action on repair works
Environmental Protection Department (2014/4544B)	Staff reminded to conduct timely tests on suspected cases of illegal discharge of sewage
Food and Environmental Hygiene Department (2015/0656)	Internal guidelines reviewed to consider setting a time frame for collecting food exhibits by its staff upon receipt of a complaint
Government Property Agency (2015/0613)	• Computer system enhanced to issue periodic reminders and monthly outstanding case reports on applications for refund of deposit and other tasks such as rent review exercises; • All expired or terminated tenancies examined to ensure that deposit refund action has been duly taken and followed up; and • Lists regularly generated on leased out tenancies that would expire or terminate in six months for monitoring purpose
Hospital Authority (2014/0859)	Data collected on the charging pattern of university and Hospital Authority doctors at private clinics, to be shared and exchanged at the liaison platform on an annual basis

Housing Department (2014/2264)	Records of non-collection of tenancy agreements to be reviewed once every two months, with suspected cases referred to relevant sections for follow-up action
Housing Department (2014/4012)	• Improper use of shops more closely monitored and tenancy agreement more stringently enforced; • Inspection and record keeping system on monitoring the use of shops enhanced; and • Inclusion of end date in the approval for shop tenants' application for renovation
Housing Department (2015/0942(I))	Additional signal device installed in the CCTV system of a shopping mall under Housing Department management to alert staff of any video recording failure for ensuring normal functioning of the system and better monitoring of the mall. Training session for Housing Department staff on the new device conducted
Lands Department (2013/2794B, 2013/2836B) (topical cases)	• More stringent approach adopted in approving applications for regularisation of unauthorised private columbaria; • Amendments made to the Land (Miscellaneous Provisions) Ordinance to increase the penalties for illegal occupation of Government land; and • Land control actions taken in respect of an unauthorised columbarium on Government land and the irregularity rectified
Transport Department (2014/2432A, 2014/3317B, 2014/3724A)	Applicants required to sign an undertaking in the application form for the Ex-gratia Payment Scheme for Phasing Out Pre-Euro IV Diesel Commercial Vehicles to acknowledge their understanding and acceptance of the terms and conditions of the Scheme
Transport Department (2015/0117, 2015/0280)	• Regular telephone spot checks conducted to ensure that all authorised vehicle examination centres ("VECs") follow the required procedures in making appointment to prevent double or invalid booking ; • Warning letter would be issued for any incompliance; and • Bi-annual meetings would be held with representatives of the VECs to strengthen communication
Transport Department (2015/1595)	• Tightened up enforcement of the requirement on provision of address proof, such that the application will normally not be accepted if the applicant cannot provide the address proof; and • For cases where discretion was exercised to process the applications first and the applicants providing address proof later, the computer would generate a letter to remind the applicant to provide address proof within 14 days
Transport Department (2015/2103)	Ferry operators requested to provide record of service delay on a monthly basis

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(6) Clearer/more reasonable rules and charges	
Organisation (Case reference)	**Administrative Enhancement**
Leisure and Cultural Services Department (2012/0709)	Heavier penalty imposed for failure to comply with Leisure and Cultural Services Department's booking procedures and guidelines
Privacy Commissioner for Personal Data (2015/0922)	On the legal requirement for Privacy Commissioner for Personal Data to notify complainants in 45 days whether their complaints would be pursued formally, internal procedures and arrangements made to remind and enable staff to comply with the requirement

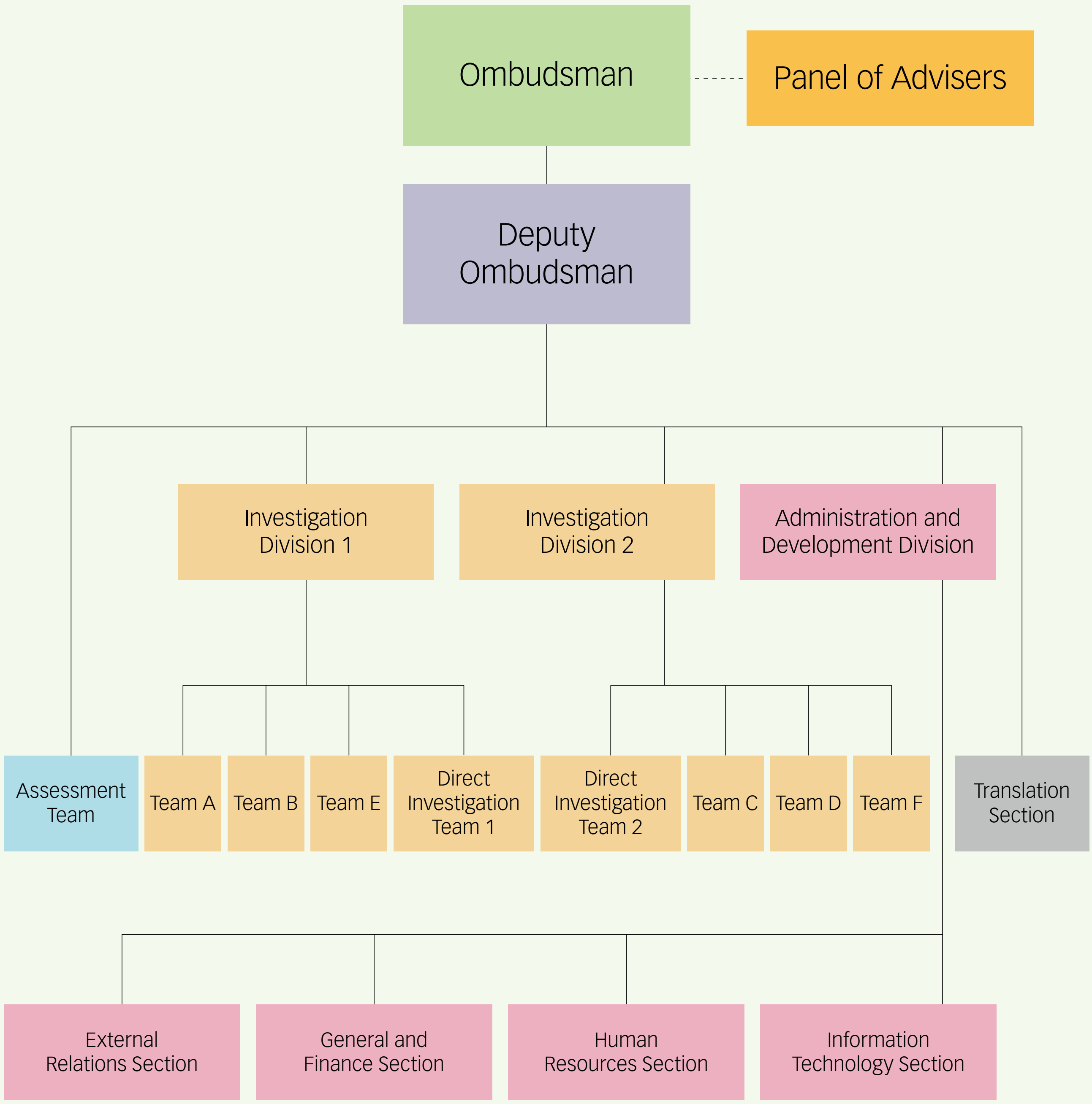
(7) Clearer and more timely information to the public	
Organisation (Case reference)	**Administrative Enhancement**
Environmental Protection Department (2014/2432B, 2014/3317A, 2014/3724B)	• Reminder letters issued to eligible vehicle owners to raise their awareness of the requirements of the Ex-gratia Payment Scheme for Phasing Out Pre-Euro IV Diesel Commercial Vehicles; • Briefings conducted for registered automobile scrapping companies to enhance their understanding of the requirements under the Scheme; and • More detailed explanation provided on why the rejected applications cannot be re-considered on compassionate grounds
Food and Environmental Hygiene Department (2015/1990)	Clearer wording adopted in the notices of "Termination of Tenancy" to avoid misunderstanding
Hospital Authority (2014/0859)	Information on the charging pattern of private clinic cases attended by university and Hospital Authority doctors made available to private patients upon request to enhance transparency
Hospital Authority (2014/1815(R))	• Contact telephone number provided in the access to information application form; and • The link of Hospital Authority's Code on Access to Information webpage included in more public hospitals' websites
Housing Department (2015/0840)	Clearer wordings used when notifying Public Rental Housing tenants of the validity period of allotted points under the "Marking Scheme for Estate Management Enforcement"
Housing Department (2015/1633)	Form revised to show clearer information and instructions for "Change of Particulars"

Immigration Department (2015/3129)	Information on the processing time of visa applications for non-local graduates published
Leisure and Cultural Services Department (2012/1591)	More assessment information for booking of the performing arts venues disclosed to the public
Planning Department (2014/5650)	Report made to the Town Planning Board for improvement: making audio records available while translation of minutes of meeting is underway
Transport Department (2014/2432A, 2014/3317B, 2014/3724A)	More information (e.g. the eligibility criteria, application procedure and requirements) included in the application form and addition of an application checklist for the Ex-gratia Payment Scheme for Phasing Out Pre-Euro IV Diesel Commercial Vehicles
Transport Department (2015/0117, 2015/0280)	• More keywords included in the search engine of GovHK to facilitate the public in accessing the webpage for checking of available slots in all authorised vehicle examination centres ("VECs"); • Publicity for the webpage strengthened; • 1823 allowed to refer enquiries regarding available slots in VECs to Transport Department for follow up; and • Publicity enhanced to remind car owners to make early booking of vehicle examination
Transport Department (2015/1595)	• Publicity enhanced to remind applicants of the need to provide address proof and the consequence for contravention; and • Reminder added to relevant application forms and Transport Department's website on the need to provide address proof when submitting applications
Transport Department (2015/2006)	Notification letter relating to refund for unexpired licence period revised to avoid misunderstanding
Water Supplies Department (2014/3310)	Warning notice would be issued to the registered consumer immediately when "high/low" consumption checking mechanism is triggered

Examples of Improvement Measures Introduced by Organisations Following Our Inquiry or Investigation

(8) Training for staff	
Organisation (Case reference)	**Administrative Enhancement**
Airport Authority (2013/4752)	Staff training provided to instil positive attitude in handling enquiries and complaints
Buildings Department (2015/0605)	Staff training strengthened to ensure compliance of the performance pledge in handling enquiries and complaints
Civil Aviation Department (2014/3973(I))	Training session for staff on Code on Access to Information was conducted
Estate Agents Authority (2012/5437)	Induction training and regular refresher courses organised for new and serving investigation staff to strengthen their professional standard in complaints handling
Government Property Agency (2015/0613)	• Staff briefing conducted to introduce the new functions of the computer system; and • Three briefing sessions conducted to enhance staff awareness of supervisory accountability, complaint handling, conduct and discipline as well as other requirements under the Code on Access to Information and Personal Data (Privacy) Ordinance
Hospital Authority (2015/3582)	Strengthened training provided to clinic staff and Patient Relations Officers to ensure their understanding and full compliance with the procedures for handling payments by recipients of Comprehensive Social Security Assistance
Housing Department (2013/1118, 2013/1578)	Training workshop held for frontline staff to strengthen their knowledge on handling applications for displaying publicity materials
Housing Department (2015/0942(I))	• Code on Access to Information re-circulated to staff reminding them to comply with the requirements when handling information requests from the public; and • Staff training programme strengthened to include training on compliance with the Code
Hong Kong Housing Society (2014/1836(R))	Training provided to staff to ensure that requests for information are properly handled according to the new guidelines
Post Office (2015/2363)	Staff reminded to seek appropriate advice when handling requests for information
Transport Department (2014/2640)	Workshop conducted to strengthen the staff's skills on handling and replying to complaints
Transport Department (2015/0117, 2015/0280)	Training courses arranged for approved car testers of new Vehicles Examination Centres
Transport Department (2015/3078(I))	Strengthened staff training provided on handling requests under the Code on Access to Information

Office of The Ombudsman



Panel of Advisers

Accountancy	Mr Tsai Wing Chung, Philip, JP
Engineering and Surveying	Ir Chan Chi Chiu, SBS
	Ir Dr Chan Ka Ching, Andrew, BBS, JP *(Retired on 31/7/2015)*
	Sr Chan Yuk Ming, Raymond
	Ir Dr Ho Chung Tai, Raymond, SBS, MBE, SB St J, JP
	Dr Hung Wing Tat, MH
	Ir Leung Kwong Ho, Edmund, SBS, OBE, JP
Legal	Professor Johannes M M Chan, SC
	Mr Leung Wai Man, Raymond, SC
	Professor Anne Scully-Hill
	Dr Tai Yiu Ting, Benny, MH
	Professor Stephen Thomson
	Ms Wong Pui Sze, Priscilla, JP
Medical and Nursing	Professor Chien Wai Tong
	Professor Lai Kam Yuk, Claudia
	Professor Lo Chung Mau, JP
	Professor Grace Tang, SBS, JP
	Dr Tsang Fan Kwong
Social Work and Rehabilitation Services	Professor Chan Lai Wan, Cecilia, JP
	Professor Fang Meng Sang, Christine, BBS, JP
	Professor Ma Lai Chong, Joyce, JP
	Mr Ng Wang Tsang, Andy

Visits to the Office of The Ombudsman

Annex 13

Date	Visitors
23 April 2015	Delegates from the Human Resources and Social Security Bureau and the Administration of Social Insurance Fund of Foshan Municipality, arranged by the Hong Kong Polytechnic University
28 April 2015	Participants of the "Training Course on Public Financial Management" for civil servants and professionals from Qinghai Province, arranged by the Hong Kong Financial Services Institute
12 May 2015	Mr Cheong Weng Chon, the Commissioner Against Corruption, Macao Special Administrative Region and his delegation
14 May 2015	Mr Fu Kui, Director General (Vice Minister Rank) of the International Cooperation Bureau of the Central Commission for Discipline Inspection and the Ministry of Supervision and his delegation
14 May 2015	Delegates from the Office of the Attorney-General and Department of Justice of Kenya
3 June 2015	Participants of the "Training Course on Building the Capabilities of Civil Servants" for officials from Xinjiang Uygur Autonomous Region, arranged by the Hong Kong Financial Services Institute
4 June 2015	Participants of the "28th Training Course for Middle-aged and Young Cadres" from Inner Mongolia Autonomous Region, arranged by the Hong Kong Institute for Public Administration
9 June 2015	Participants of the "Training Scheme in Common Law for Mainland Legal Officials (2014-2015)", arranged by the Department of Justice
30 June 2015	Delegates from the Commission Against Corruption, Macao Special Administrative Region
13 July 2015	Delegates from the Control Yuan, Taiwan
17 July 2015	Participants of the "Training Course on Politics and Laws in Hong Kong and Macao for Middle-aged and Young Academics" of the Chinese Association of Hong Kong and Macao Studies, arranged by the Hong Kong Institute for Public Administration
29 July 2015	Participants of the "Training Course on Society and Public Administration in Hong Kong and Macao for Middle-aged and Young Academics" of the Chinese Association of Hong Kong and Macao Studies, arranged by the Hong Kong Institute for Public Administration
30 July 2015	Participants of the "Training Course on Enhancing Administrative Capabilities under Rule of Law" for officials from Guizhou Province (Group 1), arranged by the Hong Kong Financial Services Institute

Visits to the Office of The Ombudsman

Date	Visitors
30 July 2015	Participants of the "Training Course on Enhancing Administrative Capabilities under Rule of Law" for officials from Guizhou Province (Group 2), arranged by the Hong Kong Financial Services Institute
27 August 2015	Delegates from the Shenzhen Municipal Supervision Bureau, arranged by the Vocational Training Council
11 September 2015	Delegates from the Shenzhen Municipal Commission Office, arranged by the Vocational Training Council
15 September 2015	Participants of the "Training Course on Human Resources Development and Management" for officials from Guizhou Province, arranged by the Hong Kong Financial Services Institute
17 September 2015	Delegates from the China Banking Regulatory Commission, arranged by the Hong Kong Monetary Authority
25 September 2015	Participants of the "Training Course on Human Resources Development and Labour Employment Services" for officials from Tibet Autonomous Region, arranged by the Hong Kong Financial Services Institute
13 October 2015	Participants of the "Training Course on Administrative Reform and Law-based Governance" for officials from Guizhou Province, arranged by the Hong Kong Financial Services Institute
26 October 2015	Delegates from the 4th Public Legal Executive Training Programme, arranged by the Office of the Council of State of Thailand
30 October 2015	Participants of the "Training Course on Management of Modern Society" for officials from Guizhou Province, arranged by the Hong Kong Financial Services Institute
4 November 2015	Delegates from the Bao'an District Supervision Bureau, Shenzhen Municipality, arranged by the Vocational Training Council
5 November 2015	Participants of the "Training Course on Building a Corruption-free Government and Administrative Supervision" for officials from Guizhou Province, arranged by the Hong Kong Financial Services Institute
17 November 2015	Delegates from the Fujian Provincial Commission Office, arranged by the Hong Kong Financial Services Institute
18 November 2015	Participants of the "13th Postgraduate Certificate Course in Corruption Studies", arranged by the School of Professional and Continuing Education, the University of Hong Kong

Date	Visitors
19 November 2015	Delegates from the Shenzhen Municipal Committee for Discipline Inspection, arranged by the Vocational Training Council
9 December 2015	Participants of the "Training Course on Innovative Management and Building a Service-oriented Government" for officials from the Guizhou Provincial Government, arranged by Wen Wei Po
14 December 2015	Delegates from the Tianjin Municipal Supervision Bureau, arranged by Tsinlien Group Company Limited
20 January 2016	Students from Kookmin University, Korea, arranged by the City University of Hong Kong
21 January 2016	Delegates from the Supreme People's Court, arranged by the Information Services Department
27 January 2016	Mr Wan Chun, Director of the Law and Policy Research Office of the Supreme People's Procuratorate, arranged by the Information Services Department
17 March 2016	Mr M Salman Faruqui, Federal Ombudsman of Pakistan, and Mr Ghufran Memon, Consul General of Pakistan
30 March 2016	Delegates from the National Institute of Public Administration of Indonesia





Annual Report of The Ombudsman, Hong Kong 2016

Financial Statements

for the year ended 31 March 2016

Independent auditor's report to The Ombudsman

(Established in Hong Kong pursuant to the Ombudsman Ordinance)

We have audited the financial statements of The Ombudsman set out on pages 3 to 22, which comprise the balance sheet as at 31 March 2016, the statement of income and expenditure, statement of comprehensive income, statement of changes in funds and cash flow statement for the year then ended and a summary of significant accounting policies and other explanatory information.

The Ombudsman's responsibility for the financial statements

The Ombudsman is responsible for the preparation of financial statements that give a true and fair view in accordance with Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants and for such internal control as The Ombudsman determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. This report is made solely to you, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by The Ombudsman, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements give a true and fair view of the financial position of The Ombudsman as at 31 March 2016 and of its surplus and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards.

KPMG
Certified Public Accountants

8th Floor, Prince's Building
10 Chater Road
Central, Hong Kong

16 May 2016

Statement of income and expenditure for the year ended 31 March 2016

(Expressed in Hong Kong dollars)

	Note	2016	2015
Income			
Government subventions	4	$ 111,221,000	$ 107,123,357
Amortisation of deferred Government subventions	4	1,814,220	1,814,220
Interest income on bank deposits		3,795,897	5,783,332
Other income		39,340	354
		$ 116,870,457	$ 114,721,263
Expenditure			
Operating expenses	5	(112,723,202)	(105,193,915)
Surplus for the year		$ 4,147,255	$ 9,527,348

Statement of comprehensive income for the year ended 31 March 2016

The Ombudsman had no components of comprehensive income other than "surplus for the year" in either of the years presented. Accordingly, no separate statement of comprehensive income is presented as The Ombudsman's "total comprehensive income" was the same as the "surplus for the year" in both years.

The notes on pages 9 to 22 form part of these financial statements.

Balance sheet at 31 March 2016

(Expressed in Hong Kong dollars)

	Note	2016	2015
ASSETS			
Non-current assets			
Property, plant and equipment	8	$ 71,976,942	$ 74,949,577
Deposits and prepayment – non-current		3,278,453	–
		$ 75,255,395	$ 74,949,577
Current assets			
Deposits and prepayments – current		$ 7,763,547	$ 908,158
Interest receivable		946,185	2,782,282
Time deposits with original maturity over three months		319,133,000	342,661,000
Cash and cash equivalents	9	29,205,273	10,528,086
		$ 357,048,005	$ 356,879,526
Total assets		$ 432,303,400	$ 431,829,103
LIABILITIES			
Non-current liabilities			
Contract gratuity payable – non-current	10	$ 4,207,337	$ 4,365,340
Deferred Government subventions – non-current	4	64,343,098	66,157,318
		$ 68,550,435	$ 70,522,658
Current liabilities			
Other payables and accruals		$ 2,473,003	$ 3,955,512
Contract gratuity payable – current	10	6,745,572	6,963,798
Deferred Government subventions – current	4	1,814,220	1,814,220
		$ 11,032,795	$ 12,733,530
Total liabilities		79,583,230	83,256,188

Balance sheet at 31 March 2016 (continued)

(Expressed in Hong Kong dollars)

	Note	2016	2015
FUNDS			
Accumulated funds		$ 352,720,170	$ 348,572,915
Total funds		$ 352,720,170	$ 348,572,915
Total funds and liabilities		$ 432,303,400	$ 431,829,103

Approved and authorised for issue by The Ombudsman on 16 May 2016

Ms Connie Lau
The Ombudsman

The notes on pages 9 to 22 form part of these financial statements.

Statement of changes in funds for the year ended 31 March 2016

(Expressed in Hong Kong dollars)

		Accumulated funds
Balance at 1 April 2014	$	339,045,567
Change in funds for 2014/2015:		
Surplus and total comprehensive income for the year		9,527,348
Balance at 31 March 2015 and 1 April 2015	$	348,572,915
Change in funds for 2015/2016:		
Surplus and total comprehensive income for the year		4,147,255
Balance at 31 March 2016	$	352,720,170

The notes on pages 9 to 22 form part of these financial statements.

Cash flow statement for the year ended 31 March 2016

(Expressed in Hong Kong dollars)

	Note	2016	2015
Operating activities			
Surplus for the year		$ 4,147,255	$ 9,527,348
Adjustments for:			
Interest income		(3,795,897)	(5,783,332)
Depreciation	5	3,596,812	3,523,872
Amortisation of deferred Government subventions		(1,814,220)	(1,814,220)
(Gain)/loss on disposal of property, plant and equipment		(68,492)	52
Operating surplus before changes in working capital		$ 2,065,458	$ 5,453,720
Increase in deposits and prepayments		(10,133,842)	$ (236,769)
(Decrease)/increase in other payables and accruals		(1,482,509)	625,167
(Decrease)/increase in contract gratuity payable		(376,229)	2,934,651
Net cash generated from operating activities		$ (9,927,122)	$ 8,776,769
Investing activities			
Interest received		$ 5,631,994	$ 5,427,867
Payments for purchase of property, plant and equipment		(1,152,685)	(1,668,978)
Proceeds from disposal of property, plant and equipment		597,000	–
Increase of time deposits with original maturity over three months		(319,133,000)	(342,661,000)
Time deposits with original maturity over three months matured		342,661,000	331,497,500
Net cash used in investing activities		$ 28,604,309	$ (7,404,611)

Cash flow statement for the year ended 31 March 2016 (continued)

(Expressed in Hong Kong dollars)

	Note	2016	2015
Net increase in cash and cash equivalents		**$ 18,677,187**	$ 1,372,158
Cash and cash equivalents at beginning of the year	9	**10,528,086**	9,155,928
Cash and cash equivalents at end of the year	9	**$ 29,205,273**	10,528,086

The notes on pages 9 to 22 form part of these financial statements.

Notes to the financial statements
(Expressed in Hong Kong dollars)

1 Status of The Ombudsman

The Ombudsman was established as a corporation by statute on 19 December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

2 Significant accounting policies

(a) Statement of compliance

These financial statements have been prepared in accordance with all applicable Hong Kong Financial Reporting Standards ("HKFRSs"), which collective term includes all applicable individual Hong Kong Financial Reporting Standards, Hong Kong Accounting Standards ("HKASs") and Interpretations issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA") and accounting principles generally accepted in Hong Kong. A summary of the significant accounting policies adopted by The Ombudsman is set out below.

The HKICPA has issued certain new and revised HKFRSs that are first effective or available for early adoption for the current accounting period of The Ombudsman. None of these developments have had a material effect on The Ombudsman's results and financial position for the current or prior periods have been prepared or presented. The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period (see note 15).

(b) Basis of preparation of the financial statements

The measurement basis used in the preparation of the financial statements is the historical cost basis.

The preparation of financial statements in conformity with HKFRSs requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenses. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

Judgement made by The Ombudsman in the application of HKFRSs that has significant effect on the financial statements and major source of estimation uncertainty is discussed in note 3.

2 Significant accounting policies (continued)

(c) Property, plant and equipment

Property, plant and equipment are stated at cost less accumulated depreciation and impairment losses.

Depreciation is calculated to write off the cost of items of property, plant and equipment, less their estimated residual value, if any, using the straight line method over their estimated useful lives as follows:

–	Interest in leasehold land held for own use under finance leases	Over unexpired term of lease
–	Building	40 years
–	Leasehold improvements	10 years
–	Office furniture	5 years
–	Office equipment	5 years
–	Computer equipment	4 years
–	Motor vehicles	5 years

No provision for depreciation is made for construction in progress until such time when the assets are substantially completed and ready for use.

Both the useful life of an asset and its residual value, if any, are reviewed annually.

The carrying amounts of property, plant and equipment are reviewed for indications of impairment at each balance sheet date. An impairment loss is recognised in the statement of income and expenditure if the carrying amount of an asset, or the cash-generating unit to which it belongs, exceeds its recoverable amount. The recoverable amount of an asset, or of the cash-generating unit to which it belongs, is the greater of its fair value less costs of disposal and value in use. In assessing value in use, the estimated future cash flows are discounted to their present values using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the assets. An impairment loss is reversed if there has been a favourable change in the estimates used to determine the recoverable amount.

Gains or losses arising from the retirement or disposal of an item of property, plant and equipment are determined as the difference between the net disposal proceeds and the carrying amount of the item and are recognised in the statement of income and expenditure on the date of retirement or disposal.

2 Significant accounting policies (continued)

(d) Leased assets

An arrangement, comprising a transaction or a series of transactions, is or contains a lease if The Ombudsman determines that the arrangement conveys a right to use a specific asset or assets for an agreed period of time in return for a payment or a series of payments. Such a determination is made based on an evaluation of the substance of the arrangement and is regardless of whether the arrangement takes the legal form of a lease.

(i) Classification of assets leased to The Ombudsman

Assets that are held by The Ombudsman under leases which transfer to The Ombudsman substantially all the risks and rewards of ownership are classified as being held under finance leases. Leases which do not transfer substantially all the risks and rewards of ownership to The Ombudsman are classified as operating leases.

(ii) Assets acquired under finance leases

Where The Ombudsman acquires the use of assets under finance leases, the amounts representing the fair value of the leased asset, or, if lower, the present value of the minimum lease payments, of such assets are recognised as property, plant and equipment and the corresponding liabilities, net of finance charges, are recorded as obligations under finance leases. Depreciation is provided at rates which write off the cost of the assets over the term of the relevant lease or, where it is likely The Ombudsman will obtain ownership of the asset, the life of the asset, as set out in note 2(c). Impairment losses are accounted for in accordance with the accounting policy as set out in note 2(c).

(iii) Operating lease charges

Where The Ombudsman has the use of other assets under operating leases, payments made under the leases are charged to statement of income and expenditure in equal instalments over the accounting periods covered by the lease term, except where an alternative basis is more representative of the pattern of benefits to be derived from the leased asset. Lease incentives received are recognised in the statement of income and expenditure as an integral part of the aggregate net lease payments made.

(e) Receivables

Receivables are initially recognised at fair value and thereafter stated at amortised cost using the effective interest method, less allowance for impairment of doubtful debts, except where the effect of discounting would be immaterial. In such cases, the receivables are stated at cost less allowance for impairment of doubtful debts.

2 Significant accounting policies (continued)

(e) Receivables (continued)

Impairment losses for bad and doubtful debts are recognised when there is objective evidence of impairment and are measured as the difference between the carrying amount of the financial asset and the estimated future cash flows, discounted at the asset's original effective interest rate where the effect of discounting is material. Objective evidence of impairment includes observable data that come to the attention of The Ombudsman about events that have an impact on the asset's estimated future cash flows such as significant financial difficulty of the debtor.

Impairment losses for receivables whose recovery is considered doubtful but not remote are recorded using an allowance account. When The Ombudsman is satisfied that recovery is remote, the amount considered irrecoverable is written off against the receivables directly and any amounts held in the allowance account relating to that debt are reversed. Subsequent recoveries of amounts previously charged to the allowance account are reversed against the allowance account. Other changes in the allowance account and subsequent recoveries of amounts previously written off directly are recognised in the statement of income and expenditure.

(f) Other payables and accruals

Other payables and accruals are initially recognised at fair value and subsequently stated at amortised cost unless the effect of discounting would be immaterial, in which case they are stated at cost.

(g) Cash and cash equivalents

Cash and cash equivalents comprise cash at bank and on hand, demand deposits with banks and other financial institutions, and short-term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value, having been within three months of maturity at acquisition.

(h) Employee benefits

Salaries, gratuities, paid annual leave, leave passage and the cost to The Ombudsman of non-monetary employee benefits are accrued in the year in which the associated services are rendered by employees of The Ombudsman. Where payment or settlement is deferred and the effect would be material, these amounts are stated at their present values.

Contributions to Mandatory Provident Fund ("MPF") as required under the Hong Kong Mandatory Provident Fund Schemes Ordinance are recognised as an expenditure in the statement of income and expenditure as incurred.

2 Significant accounting policies (continued)

(i) Provisions and contingent liabilities

Provisions are recognised for liabilities of uncertain timing or amount when The Ombudsman has a legal or constructive obligation arising as a result of a past event, it is probable that an outflow of economic benefits will be required to settle the obligation and a reliable estimate can be made. Where the time value of money is material, provisions are stated at the present value of the expenditure expected to settle the obligation.

Where it is not probable that an outflow of economic benefits will be required, or the amount cannot be estimated reliably, the obligation is disclosed as a contingent liability, unless the probability of outflow of economic benefits is remote. Possible obligations, whose existence will only be confirmed by the occurrence or non-occurrence of one or more future events are also disclosed as contingent liabilities unless the probability of outflow of economic benefits is remote.

(j) Income recognition

Income is measured at the fair value of the consideration received or receivable. Provided it is probable that the economic benefits will flow to The Ombudsman and the income and expenditure, if applicable, can be measured reliably, income is recognised in the statement of income and expenditure as follows:

(i) Government subventions

An unconditional Government subvention is recognised as income in the statement of income and expenditure when the grant becomes receivable. Other Government subventions are recognised in the balance sheet initially when there is reasonable assurance that they will be received and that The Ombudsman will comply with the conditions attaching to them. Subventions that compensate The Ombudsman for expenses incurred are recognised as income in the statement of income and expenditure on a systematic basis in the same periods in which the expenses are incurred. Subventions that compensate The Ombudsman for the cost of an asset are included in the balance sheet as deferred Government subventions and recognised in the statement of income and expenditure over the period of the lease term or useful live of the related asset on a basis consistent with the depreciation policy as set out in note 2(c).

(ii) Interest income

Interest income is recognised as it accrues using the effective interest method.

(iii) Other income

Other income is recognised on an accrual basis.

2 Significant accounting policies (continued)

(k) Related parties

(a) A person, or a close member of that person's family, is related to The Ombudsman if that person:

(i) has control or joint control over The Ombudsman;

(ii) has significant influence over The Ombudsman; or

(iii) is a member of the key management personnel of The Ombudsman.

(b) An entity is related to The Ombudsman if any of the following conditions applies:

(i) The entity and The Ombudsman are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).

(ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).

(iii) Both entities are joint ventures of the same third party.

(iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.

(v) The entity is a post-employment benefit plan for the benefit of employees of either The Ombudsman or an entity related to The Ombudsman.

(vi) The entity is controlled or jointly controlled by a person identified in note 2(k)(a).

(vii) A person identified in note 2(k)(a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).

(viii) The entity, or any member of a group of which it is a part, provides key management personnel services to The Ombudsman.

Close members of the family of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity.

3 Accounting judgement and estimate

In the process of applying The Ombudsman's accounting policies, The Ombudsman has made the following accounting judgement:

Depreciation

Property, plant and equipment, other than construction in progress, is depreciated on a straight line basis over their estimated useful lives. The Ombudsman reviews annually the estimated useful life in order to determine the amount of depreciation expense to be recorded during any reporting period. The useful lives are based on The Ombudsman's historical experience with similar assets taking into account anticipated technological changes. The depreciation expense for future periods is adjusted if there are significant changes from previous estimations.

4 Government subventions and deferred Government subventions

Government subventions represent the funds granted by the Government for daily operations of The Ombudsman.

Deferred Government subventions represent the funds granted by the Government for prepaid lease payments and the purchase of building. Amortisation of deferred Government subventions is recognised on a straight line basis over the period of the lease term of 54 years of interest in leasehold land held for own use under finance leases for prepaid lease payments and the useful life of 40 years of building in accordance with the accounting policies set out in notes 2(c) and 2(j)(i).

At 31 March 2016, the deferred Government subventions are expected to be amortised as follows:

	2016	2015
Within one year and included in current liabilities	$ 1,814,220	$ 1,814,220
After one year and included in non-current liabilities	64,343,098	66,157,318
	$ 66,157,318	$ 67,971,538

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5 Operating expenses

	2016	2015
Employee benefit expenses (note 6)	**$ 94,810,160**	$ 85,905,105
Depreciation of property, plant and equipment (note 8)	**3,596,812**	3,523,872
Rates and management fee	**3,099,129**	2,834,251
Operating lease rentals in respect of parking spaces	**91,200**	91,200
Auditor's remuneration	**79,600**	77,300
Announcement of public interest expense	**6,250,000**	8,417,463
Other expenses	**4,796,301**	4,344,724
	$ 112,723,202	$ 105,193,915

6 Employee benefit expenses

	2016	2015
Salaries and allowances	**$ 82,608,554**	$ 75,197,421
Contract gratuity	**8,150,282**	7,168,661
Pension costs – MPF scheme	**2,365,033**	1,948,447
Unutilised annual leave	**165,035**	123,838
Other employee benefit expenses	**1,521,256**	1,466,738
	$ 94,810,160	$ 85,905,105

7 Key management compensation

	2016	2015
Short-term employee benefits	**$ 15,002,925**	$ 14,033,933
Post-employment benefits	**1,999,129**	1,858,169
	$ 17,002,054	$ 15,892,102

8 Property, plant and equipment

	Interest in leasehold land held for own use under finance leases	Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Construction in progress	Total
Cost:									
At 1 April 2014	$ 74,900,000	$ 16,800,000	$ 15,207,096	$ 686,923	$ 1,541,858	$ 3,704,477	$ 1,064,771	$ 1,457,095	$ 115,362,220
Additions	–	–	318,274	122,862	14,465	1,213,377	–	–	1,668,978
Transfers	–	–	–	–	–	1,457,095	–	(1,457,095)	–
Disposals	–	–	–	(395)	(4,826)	(340,839)	–	–	(346,060)
At 31 March 2015	$ 74,900,000	$ 16,800,000	$ 15,525,370	$ 809,390	$ 1,551,497	$ 6,034,110	$ 1,064,771	$ –	$ 116,685,138
Accumulated depreciation:									
At 1 April 2014	$ 16,851,804	$ 5,062,438	$ 12,383,975	$ 534,140	$ 760,216	$ 2,741,250	$ 223,874	$ –	$ 38,557,697
Charge for the year	1,394,220	420,000	377,370	55,705	194,355	901,780	180,442	–	3,523,872
Written back on disposals	–	–	–	(395)	(4,826)	(340,787)	–	–	(346,008)
At 31 March 2015	$ 18,246,024	$ 5,482,438	$ 12,761,345	$ 589,450	$ 949,745	$ 3,302,243	$ 404,316	$ –	$ 41,735,561
Net book value:									
At 31 March 2015	$ 56,653,976	$ 11,317,562	$ 2,764,025	$ 219,940	$ 601,752	$ 2,731,867	$ 660,455	$ –	$ 74,949,577

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8 Property, plant and equipment (continued)

	Interest in leasehold land held for own use under finance leases	Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Construction in progress	Total
Cost:									
At 1 April 2015	$ 74,900,000	$ 16,800,000	$ 15,525,370	$ 809,390	$ 1,551,497	$ 6,034,110	$ 1,064,771	$ –	$ 116,685,138
Additions	–	–	200,360	14,509	80,680	162,135	695,001	–	1,152,685
Disposals	–	–	–	(5,022)	(20,630)	(38,032)	(884,971)	–	(948,655)
At 31 March 2016	$ 74,900,000	$ 16,800,000	$ 15,725,730	$ 818,877	$ 1,611,547	$ 6,158,213	$ 874,801	$ –	$ 116,889,168
Accumulated depreciation:									
At 1 April 2015	$ 18,246,024	$ 5,482,438	$ 12,761,345	$ 589,450	$ 949,745	$ 3,302,243	$ 404,316	$ –	$ 41,735,561
Charge for the year	1,394,220	420,000	406,979	66,090	195,951	969,244	144,328	–	3,596,812
Written back on disposals	–	–	–	(4,988)	(19,865)	(38,033)	(357,261)	–	(420,147)
At 31 March 2016	$ 19,640,244	$ 5,902,438	$ 13,168,324	$ 650,552	$ 1,125,831	$ 4,233,454	$ 191,383	$ –	$ 44,912,226
Net book value:									
At 31 March 2016	$ 55,259,756	$ 10,897,562	$ 2,557,406	$ 168,325	$ 485,716	$ 1,924,759	$ 683,418	$ –	$ 71,976,942

The Ombudsman's interest in leasehold land is held under long lease.

9 Cash and cash equivalents

		2016		2015
Cash at bank	$	29,202,568	$	10,523,086
Cash in hand		2,705		5,000
	$	29,205,273	$	10,528,086

10 Contract gratuity payable

The amount represents the gratuity payable to staff on expiry of their employment contracts. The amount of gratuity ranges from 10% to 25% (2015: 10% to 25%) of the basic salary less employer's contributions to MPF.

11 Taxation

The Ombudsman is exempt from taxation in respect of the Inland Revenue Ordinance in accordance with Schedule 1A Section 5(1) of the Ombudsman Ordinance.

12 Commitments

(a) Capital commitments outstanding at 31 March 2016 not provided for in the financial statements were as follows:

		2016		2015
Contracted for	$	–	$	187,153

(b) At 31 March 2016, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

		2016		2015
Within 1 year	$	7,600	$	7,600

13 Management of accumulated funds

The Ombudsman's primary objective when managing its accumulated funds is to safeguard The Ombudsman's ability to continue as a going concern. The Ombudsman is not subject to externally imposed requirements relating to its accumulated funds.

14 Financial risk management and fair values of financial instruments

Risk management is carried out by the accounting department under policies approved by The Ombudsman. The accounting department identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman provides written principles for overall risk management such as interest-rate risk, use of financial instruments and investing excess liquidity.

The Ombudsman's exposure to credit, liquidity, interest rate and currency risks are described below:

(a) Credit risk

The Ombudsman's credit risk is primarily attributable to time deposits and cash and cash equivalents. The Ombudsman has a credit policy in place and the exposure to this credit risk is monitored on an ongoing basis.

Cash is deposited with financial institutions with sound credit ratings to minimise credit exposure.

The maximum exposure to credit risk is represented by the carrying amount of each financial asset in the balance sheet. The Ombudsman does not provide any guarantees which would expose The Ombudsman to credit risk.

(b) Liquidity risk

The Ombudsman's policy is to regularly monitor its current and expected liquidity requirements and to ensure that it maintains sufficient reserves of cash to meet its liquidity requirements in the short and longer term.

The following table shows the remaining contractual maturities at the balance sheet date of The Ombudsman's financial liabilities, which are based on contractual undiscounted cash flows and the earliest date The Ombudsman can be required to pay:

	2016				
	Contractual undiscounted cash outflow				
	Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years	Total contractual undiscounted cash flows	Carrying amount
Contract gratuity payable	**$ 6,745,572**	**$ 2,069,235**	**$ 2,138,102**	**$10,952,909**	**$10,952,909**
Other payables and accruals	**2,473,003**	**–**	**–**	**2,473,003**	**2,473,003**
	$ 9,218,575	**$ 2,069,235**	**$ 2,138,102**	**$13,425,912**	**$13,425,912**

14 Financial risk management and fair values of financial instruments (continued)

(b) Liquidity risk (continued)

	2015				
	Contractual undiscounted cash outflow				
	Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years	Total contractual undiscounted cash flows	Carrying amount
Contract gratuity payable	$ 6,963,798	$ 3,637,037	$ 728,303	$ 11,329,138	$ 11,329,138
Other payables and accruals	3,955,512	–	–	3,955,512	3,955,512
	$ 10,919,310	$ 3,637,037	$ 728,303	$ 15,284,650	$ 15,284,650

(c) Interest rate risk

Interest rate risk is the risk that the value of a financial instrument will fluctuate due to changes in market interest rates. The Ombudsman's only exposure to interest rate risk is via its bank balances which bear interest at market rates.

Sensitivity analysis

At 31 March 2016, it is estimated that a general increase/decrease of 100 (2015: 100) basis points in interest rates, with all other variables held constant, would have increased/decreased The Ombudsman's surplus and accumulated funds by approximately $3,483,000 (2015: $3,531,000).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the balance sheet date and had been applied to the financial instruments which expose The Ombudsman to interest rate risk at that date. The 100 basis points increase or decrease represents The Ombudsman's assessment of a reasonably possible change in interest rates over the period until the next annual balance sheet date. The analysis is performed on the same basis for 2015.

(d) Currency risk

The Ombudsman has no exposure to currency risk as all of The Ombudsman's transactions are denominated in Hong Kong dollars.

(e) Fair value measurement

The carrying amounts of The Ombudsman's financial instruments carried at cost or amortised cost are not materially different from their fair values at 31 March 2016 and 2015.

15 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2016

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments and new standards which are not yet effective for the year ended 31 March 2016 and which have not been adopted in these financial statements.

The Ombudsman is in the process of making an assessment of what the impact of these amendments is expected to be in the period of initial application. So far it has concluded that the adoption of them is unlikely to have a significant impact on The Ombudsman's financial statements.

Glossary of Terms

Complaint

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision or procedure which affects and aggrieves the complainant.

Consent from Complainant

To facilitate The Ombudsman's processing of a complaint, the complainant is required to give consent for: The Ombudsman to copy his/her complaint and any other information, including his/her personal data, to any party concerned; and any party concerned to provide the complainant's personal and other relevant information to The Ombudsman. The complainant may, by stating his/her wish clearly, withhold consent to the disclosure of his/her identity to the party under complaint. However, in this circumstance, The Ombudsman may not be able to process the complaint fully or at all.

Direct Investigation ("DI")

This is an investigation initiated in the public interest even in the absence of complaint and generally on matters of a systemic nature or issues of community concern.

Enquiry

An enquiry is a request for information or advice.

Full Investigation

This refers to an in-depth inquiry, usually into complex or serious complaints, with recommendations for improvement or remedy, where warranted, upon conclusion.

Inconclusive

We classify the outcome of our full investigation into a complaint or allegation as inconclusive where, on completion of the investigation, The Ombudsman is not prepared to determine whether the complaint or allegation is substantiated or not, because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

Inquiry

This is the procedure we use to handle general complaint cases, with the aim to resolve complaints more speedily. We ask the organisation under complaint to respond to us and, if we see fit, the complainant in parallel. We will examine such response, and the complainant's view on it where applicable, together with any other relevant information or evidence we have collected. We will, in conclusion, present our findings to the complainant and make suggestions to the organisation for remedy or improvement where necessary. Where deeper and fuller probing is needed before we can conclude the case, we will start a full investigation.

Investigation

This may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

This is defined in The Ombudsman Ordinance. It basically means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.

Mediation

This is a voluntary process carried out where the complainant and the organisation under complaint agree to discuss the complaint at a meeting or through the telephone, and to explore mutually acceptable solutions. Investigation officers from this Office act as impartial facilitators.

Outside Jurisdiction

This refers to the situation where the action or organisation subject to complaint is not within The Ombudsman's jurisdiction under The Ombudsman Ordinance.

Restrictions on Investigation

These are the restrictions on investigation under The Ombudsman Ordinance.

Substantiated, Partially Substantiated and Unsubstantiated

These are classifications of the outcome of our full investigations reflecting the varying degrees of culpability of an organisation under complaint.

Topical Complaints

These are complaints on a particular social or topical issue. They are essentially against the same action or decision by the organisation under complaint.

Unsubstantiated but other Inadequacies Found

This is the classification of the outcome of our full investigation where a complainant's allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration.

Withdrawal of Complaint

This is a complainant's voluntary withdrawal of a complaint. However, depending on the nature or gravity of the allegations, The Ombudsman may still pursue the case.



Complainants Charter

We endeavour to provide a high standard of service to the public. In fully discharging our duties, this Office has drawn up the following Charter:

Our Commitment

- Handle complaints in a professional, impartial and efficient manner
- Keep complainants informed of the progress and outcome of our inquiries
- Explain our decisions clearly
- Protect complainants' privacy
- Treat the public with courtesy and respect

Complainants not satisfied with our findings may write to this Office and state the grounds for a review of their cases. Any views on individual staff or our services may be directed to the Chief Manager of this Office. We will take follow-up action with professionalism and fairness.

Complainants' Responsibilities

- State clearly the issues of complaint
- Provide true and accurate information in a timely way
- Cooperate in our inquiries
- Lodge complaints in a reasonable manner
- Treat the staff with courtesy and respect

If complainants are not cooperative, the progress and/or outcome of our inquiries may be affected. In such circumstances, we will take proper actions as appropriate, such as making our decision on the basis of available evidence or terminating the inquiry.

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